



# The Commonwealth of Massachusetts

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## **Report of the Attorney General for Fiscal Year 2004**

**July 1, 2003 - June 30, 2004**

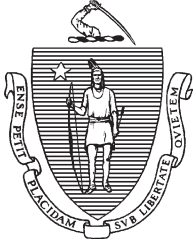
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THE COMMONWEALTH OF MASSACHUSETTS  
OFFICE OF THE ATTORNEY GENERAL

THOMAS F. REILLY  
ATTORNEY GENERAL

ONE ASHBURTON PLACE  
BOSTON, MASSACHUSETTS 02108-1698

In accordance with the provisions of Section 11 of Chapter 12 of the Massachusetts General Laws, I hereby submit the Annual Report for the Office of the Attorney General. This Annual Report covers the period from July 1, 2003 to June 30, 2004.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "T. F. Reilly", followed by a long, sweeping diagonal stroke.

Thomas F. Reilly  
Attorney General

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# TABLE OF CONTENTS

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ASSISTANT ATTORNEY GENERAL APPOINTMENTS .....	i
EXECUTIVE BUREAU .....	1
General Counsel's Office .....	2
Human Resource Management Office .....	4
External Affairs Office .....	6
Information Technology Division .....	7
Budget Office .....	8
Operations Division .....	9
Communications Office .....	10
Francis X. Bellotti Law Library .....	11
BUSINESS AND LABOR PROTECTION BUREAU .....	15
Fair Labor and Business Practices Division .....	15
Medicaid Fraud Control Unit .....	22
CRIMINAL BUREAU .....	31
Appellate Division .....	33
Corruption, Fraud, and Computer Crime Division .....	37
Victim/Witness Assistance Division .....	44
Special Investigations and Narcotics Division .....	49
Environmental Crimes Strike Force .....	59
Insurance and Unemployment Fraud Division .....	63
Criminal Justice Policy Division .....	73
Victim Compensation and Assistance Division .....	78
Financial Investigations Division .....	82
Safe Neighborhood Initiative Division .....	87

# TABLE OF CONTENTS

---

GOVERNMENT BUREAU .....	101
Administrative Law Division .....	103
Trial Division .....	116
 PUBLIC PROTECTION BUREAU .....	 129
Civil Rights and Civil Liberties Division .....	129
Consumer Protection and Antitrust Division .....	138
Environmental Protection Division .....	154
Insurance Division .....	168
Investigations Division .....	179
Mediation Services Division .....	182
Division of Public Charities .....	185
Utilities Division .....	191
 REGIONAL OFFICES .....	 203
Western Massachusetts .....	205
Central Massachusetts .....	211
Southeastern Massachusetts .....	219

Fiscal Year 2004 (7/1/03 - 6/30/04)

OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL, THOMAS F. REILLY

FIRST ASSISTANT ATTORNEY GENERAL, DEAN RICHLIN

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ANN B. ACKIL  
MICHELE L. ADELMAN  
JENNIFER A. ADREANI  
BRUCE F. ANDERSON (15)  
MARION ANTONUCCI (45)  
JAMES ARGUIN  
FREDERICK D. AUGENSTERN  
EVA BADWAY  
CHRISTINE BAILY (13)  
ANNAPURNA BALAKRISHNA  
(4)  
THOMAS BARNICO  
CHRISTOPHER K. BARRY-SMITH  
JASON B. BARSHAK  
DENISE M. BARTON (3)  
R. DAVID BECK  
ANNETTE C. BENEDETTO  
LESLIE BENNETT (11)  
ROBERT BENSON (29)  
MATTHEW Q. BERGE  
CRISPIN BIRNBAUM  
NANCY BLOOMBERG (27)  
WILLIAM F. BLOOMER  
EDWARD G. BOHLEN  
WILNER BORGELLA  
JOHN E. BOWEN  
JOHN E. BOWMAN (33)  
JULIE BRADY  
MATTHEW T. BROCK  
MONICA A. BROOKMAN (18)  
TRACEY A. BROWN  
RANJANA BURKE  
JOSEPH CALLANAN  
ROMEO CAMBA  
JESSE CAPLAN  
SANDRA CARDONE  
ERIC B. CARRIKER  
ALOEK CHAKRAVARTY (26)  
JULIE CHATTOPADHYAY  
KAJAL CHATTOPADHYAY (8)  
KATHY CHEN (37)  
NORA CHOROVER  
JOHN J. CHRISTIN, JR.

JAMES CLARK  
PETER CLARK  
STEPHEN H. CLARK (41)  
ALEXANDER COCHIS  
RICHARD COLE  
VICTORIA COLE (6)  
JEFFREY T. COLLINS  
JOHN COMPTON (7)  
JOANNA CONNOLLY  
ROSEMARY CONNOLLY  
COLLEEN CONNOR (26)  
MARGRET COOKE  
PATRICIA CORREA  
PIERCE O. CRAY  
JOHN A. CRIMMINS (44)  
GLENN CUNHA (23)  
JOHN CURSEADEN (24)  
PAMELA M. DASHIELL  
GERALD D. D'AVOLIO JR. (30)  
LINDA S. DELCASTILHO  
STEPHEN DICK  
THOMAS V. DIGANGI  
JENNIFER DOHERTY  
KIRSTEN ENGEL  
APRIL ENGLISH (3)  
BENJAMIN ERICSON  
BARBARA A. FAIN  
JAMES D. P. FARRELL  
LISA J. FAUTH  
DANIEL S. FIELD  
ROBERT FISHER (12)  
SUSAN M. FLANAGAN-CAHILL  
(11)  
ELIZABETH ANN FOLEY (29)  
MARY B. FREELEY  
ROSALYN GARBOSE  
SALVATORE M. GIORLANDINO  
FRANCO GOBOURNE (45)  
I. ANDREW GOLDBERG  
LORRAINE GOLDENBERG-  
TARROW  
ELIOT GREEN  
BERNARD W. GREENE (21)

JOHN A. GROSSMAN  
KELLI GUNAGAN  
DANIEL J. HAMMOND  
NANCY E. HARPER  
KATHERINE HATCH  
JANICE HEALY  
RICHARD HEIDLAGE  
HILARY HERSHMAN  
ERIC HIGHTOWER (31)  
SARA HINCHEY  
JOHN R. HITT  
BART Q. HOLLANDER  
PAMELA HUNT  
MARSHA HUNTER  
CAROL IANCU  
MATTHEW IRELAND  
MARIA HICKEY JACOBSON  
THOMAS M. JOHNSON  
JOCELYN JONES  
TIMOTHY JONES  
SARAH JOSS (6)  
ROSALIND KABRHEL  
MICHELLE KACZYNSKI (33)  
STEPHANIE KAHN  
JUDY ZEPRUN KALMAN  
GLENN S. KAPLAN  
JAMIE W. KATZ  
RONALD KEHOE  
DAVID KERRIGAN  
KATHARINE KLUBOCK  
MARK R. KMETZ  
PAMELA KOGUT  
CHARISMA LAM (9)  
SIU TIP LAM  
ROBERT M. LANG (16)  
JUDITH LASTER  
DIANE L. LAWTON (46)  
DANA LECCESE  
PATRICK LEE  
PETER LEIGHT  
MADELINE LEONE  
JUDY LEVENSON  
DAVID M. LIEBER

## APPOINTMENTS

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STEPHANIE S. LOVELL  
ANITA V MAIETTA  
TIMOTHY MALEC (43)  
DAVID MARKS  
LAURA MARLIN  
STEPHEN MARSHALEK  
INGRID MARTIN (5)  
TINA MATSUOKA  
LEA B. MAY  
DEAN MAZZONE (46)  
COLLEEN MCCONNELL  
PHILIP J. MCGOVERN (25)  
CONSTANCE M MCGRANE  
TIMOTHY MCGUIRE  
IAN MCKENNY (3)  
MAURA D. MCLAUGHLIN (10)  
PATRICIA MEDEIROS  
PAMELA J. MEISTER  
BETH MERACHNIK  
HOWARD R. MESHNICK  
NICHOLAS J. MESSURI  
JAMES R MILKEY  
PAUL MOLLOY  
DAVID MONAHAN  
NATALIE S. MONROE  
ALICE L. MOORE  
TIMOTHY MORAN  
MARK E. MULDOON (33)  
DAVID S. NALVEN (48)  
CATHRYN NEAVES  
EILEEN O'BRIEN  
JAMES H. O'BRIEN  
THOMAS M. O'BRIEN  
MARY O'NEIL  
WILLIAM P. O'NEILL  
JAMES L. PAPPALIOANOU (49)  
EMILY R. PARADISE  
WILLIAM L. PARDEE  
MARGARET PARKS  
MAITE A. PARSI  
ROBERT PATTEN  
PETER PAULOUSKY (38)  
SUSAN PAULSON  
ANTHONY E. PENSKI (33)  
MARY A. PHILLIPS  
MARY B. PHILLIPS  
KEVIN PLANTE  
WILLIAM W. PORTER  
CHRISTOPHER QUAYE (34)  
JASON QUEENIN  
ROBERT L. QUINAN  
SUSANNE REARDON (10)  
KARLEN REED

WILLIAM E. REYNOLDS (28)  
JULIANA D. RICE  
DEAN RICHLIN (42)  
CHERYL RIDDLE  
ROBERT W. RITCHIE  
JOSEPH W. ROGERS  
DEIRDRE RONEY  
RAYMOND ROWLAND (3)  
JOSEPH RUCCIO  
PETER F. RUSSELL  
PETER SACKS  
ERNEST L. SARASON  
KURT SCHWARTZ  
JEFFREY S. SHAPIRO  
MATTHEW SHEA  
MICHELLE SHERIDAN (2) (32)  
GLEN M. SHOR (20)  
ADAM SIMMS  
GINNY SINKEL  
TINA L. SMEATON (18)  
DANIEL I. SMULOW (19)  
JOHANNA SORIS  
AMY SILVER SPECTOR  
CHRISTOPHER SPERANZO (39)  
DAWN STOLFI STALENHOF  
(40)  
DAVID STANHILL (14)  
DEBORAH S. STEENLAND  
CATHERINE SULLIVAN  
MARK P. SUTLIFF  
JAMES A. SWEENEY  
JOHN TALBOT (26)  
ROSEMARY TARANTINO  
NEIL S. TASSEL  
DANAH TENCH  
STEVEN E. THOMAS  
MARINI TORRES-BENSON (36)  
BRUCE TRAGER  
TOBY UNGER (10)  
RAMI VANEGAS (17) (47)  
LINDA WAGNER (35)  
THUY WAGNER (8)  
DEBRA WALSH (1)  
TERESA WALSH  
JAMES S. WHITCOMB  
DORIS H. WHITE  
JUDITH WHITING  
BETSY K. WHITTEY  
GEOFFREY WHY  
JESSICA WIELGUS  
JANEL L. WILLOUGHBY  
MEREDITH WILSON (22)  
NATHANAELE WRIGHT (26)

CHARLES WYZANSKI  
SHEILA YORK  
KARLA ZARBO  
CATHERINE C. ZIEHL

## APPOINTMENTS

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### APPOINTMENT DATE

(1) 7/28/03  
(2) 8/11/03  
(3) 9/2/03  
(4) 9/8/03  
(5) 9/15/03  
(6) 9/22/03  
(7) 10/20/03  
(8) 11/3/03  
(9) 11/17/03  
(10) 12/1/03  
(11) 12/15/03  
(12) 1/5/04  
(13) 1/27/04  
(14) 2/2/04  
(15) 2/24/04  
(16) 3/1/04  
(17) 3/8/04  
(18) 3/22/04  
(19) 4/5/04  
(20) 5/3/04  
(21) 5/17/04  
(22) 6/1/04  
(23) 6/14/04

### TERMINATION DATE

(24) 7/18/03  
(25) 7/25/03  
(26) 8/1/03  
(27) 8/22/03  
(28) 8/29/03  
(29) 9/5/03  
(30) 9/12/03  
(31) 9/18/03  
(32) 9/26/03  
(33) 10/1/03  
(34) 10/17/03  
(35) 10/31/03  
(36) 11/7/03  
(37) 11/14/03  
(38) 1/2/04  
(39) 1/16/04  
(40) 2/6/04  
(41) 2/27/04  
(42) 3/5/04  
(43) 3/12/04  
(44) 3/26/04  
(45) 4/30/04  
(46) 5/7/04  
(47) 5/14/04  
(48) 5/21/04  
(49) 5/28/04

# EXECUTIVE BUREAU

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GENERAL COUNSEL'S OFFICE

HUMAN RESOURCE MANAGEMENT OFFICE

EXTERNAL AFFAIRS OFFICE

INFORMATION TECHNOLOGY DIVISION

BUDGET OFFICE

OPERATIONS DIVISION

COMMUNICATIONS OFFICE

FRANCIS X. BELLOTTI LAW LIBRARY



## EXECUTIVE BUREAU

The Executive Bureau's primary function is to provide the Office with overall administration management, policy setting, staff supervision, and employee training. It is also responsible for administering technical support to over 450 employees located throughout the Commonwealth. Additionally, the Executive Bureau performs a number of specialized functions, including the coordination of legislative affairs, constituent relations, community outreach, and all communications, both internal and external.

The Office of the Attorney General is located in four areas in Massachusetts. The main office is located in Boston with three regional offices in Springfield, Worcester, and New Bedford. The Executive Bureau is designed to develop and maintain the agency's infrastructure, enabling all the Offices of the Attorney General to function productively and effectively for the benefit of the Commonwealth's citizens.

The Office of the First Assistant Attorney General, which oversees all legal matters and includes the Office of the General Counsel, is located in the Executive Bureau. Other offices within the bureau include Human Resource Management, Budget, Information Technology, Operations, Support Services, and the Francis X. Bellotti Law Library.

In recognition of the Executive Bureau's dual responsibility to provide leadership on the Office's overall mission and priorities, and to support administratively the Office to ensure efficiency and effectiveness, the management of the bureau is carried out by the Chief of Staff and the Chief of Administration and Finance.

The Chief of Staff oversees several key functions of the Executive Bureau, including Communications, External and Intergovernmental Affairs, Public Information and Constituent Services, as well as Scheduling. In addition, the Chief of Staff is responsible for working directly with the bureaus to develop and coordinate the key policy initiatives and priority issues of the Office. The Chief of Administration and Finance is responsible for oversight of all the elements that go into ensuring the smooth, efficient, and effective operations of the Office, with the primary focus of working with the bureaus to develop an even more coordinated and positive work environment. The Chief of Administration and Finance has responsibility for the management of Human Resources, Operations, Budget, Information Technology, and the Law Library.

In Fiscal Year 2004, the Executive Bureau included Stephanie Lovell, First Assistant Attorney General; Stephen Bilafer, Chief of Staff; Jason Queenin, Chief of Administration and Finance; Kerri Burrridge; Ellen Donaghey; Diane MacDonald; Labrini Malatantis; Marie Urciuoli; and Christine Wilson.

Smooth operation of the Attorney General's Office also is reliant on the dedicated professionalism of the following staff members in the Bellotti Law Library and the Telecommunications Division: Karin Thurman, Law Librarian; Michael Ball; Catherine Douglas; Susan Lindsey; Raymond Manigault; and Denise McCartin.

## GENERAL COUNSEL'S OFFICE

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The General Counsel's Office is within the Office of the First Assistant Attorney General. This office provides recommendations on legal and policy matters to the Attorney General, the First Assistant Attorney General and the Chief of Staff. Staff within the General Counsel's Office also advise and support all other staff members, both legal and nonlegal, in the Office of the Attorney General.

More specifically, this Office advises on the Rules of Professional Conduct and the State Ethics Law; provides legal advice and assistance to the administrative staff within the Executive Bureau; through the *AG Institute* provides and conducts office-wide, in-house training programs for all staff; coordinates the appointments of Special Assistant Attorneys General (SAAG); reviews and approves legal services contracts for state agencies; reviews and circulates petitions and notices from the Board of Bar Overseers; coordinates the office-wide review of tax settlements between the Department of Revenue and individuals who have failed to pay taxes; retains and manages the state's Operating Under the Influence (OUI) notices to drinking establishments; monitors the National Association of Attorneys General (NAAG) recommendations and submissions of *amicus* briefs for the First Assistant and coordinates bureau responses; monitors and reviews NAAG's recommendations to join other Attorneys General throughout the country in letters of support and/or opposition to proposed legislation or regulations; provides technical support to the Office of Campaign and Political Finance (OCPF) by issuing warning letters to respondents and by reviewing OCPF paperwork and serving its complaints; reviews public records law appeals referred for enforcement action by the Secretary of State through the Supervisor of Public Records; provides support to the bureaus on requests for internal documents and information under the public records law and Fair Information Practices Act (FIPA); and investigates open meeting law violations by state agencies.

The General Counsel's Office started Fiscal Year 2004 with four attorneys, one paralegal and one secretary: Pamela M. Dashiell, General Counsel; Deborah Steenland, Deputy General Counsel; Judy

Zeprun Kalman, Senior Counsel; Lorraine Goldenberg-Tarrow, Assistant Attorney General; Eileen Carey, Paralegal; and Akiti Chandler, Secretary.

## SIGNIFICANT CASE SUMMARIES

The General Counsel's Office manages all internal personnel matters in conjunction with the Human Resource Management Division. It is responsible for handling workers' compensation claims, union arbitrations and grievances, discrimination complaints, and disciplinary proceedings up to and including employee terminations.

On occasion, the General Counsel's Office will provide assistance to other bureaus with respect to cases involving litigation. Therefore, some members of the staff carry an active caseload of work unrelated to the core responsibilities of the General Counsel's Office.

## STATISTICAL SUMMARY

<i>Amicus</i> Briefs Received	50
NAAG Sign-ons Received	21
Legal Services Contracts Received	48
SAAG Appointments Made	37
SAAG Appointments Amended	18
SAAG Appointments Vacated	19
Public Records Enforcement Appeals Received	16
Public Records Requests Received	41
Open Meeting Law Complaints Received	7
OCPF Cases Received	37*
Board of Bar Overseers/Tax Settlements Received	28
OUI Notices Received	1,539

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\*This total reflects the number of warning letters sent to non-filers. We also reviewed OCPF paperwork and pleadings (to be filed in court) and responded to questions by telephone and e-mail.

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

Staff of the General Counsel's Office worked with the Human Resource Management Division to conduct training on the Attorney General's Anti-Discrimination and Sexual Harassment Policy. The Members of the General Counsel's staff were involved in other cross-bureau initiatives, including the Diversity Committee, the Employee Benefits Committee and The Elder Protection Unit of the Public Protection Bureau. This office had a staff member serve as the Attorney General's representative on the Governor's Diversity and Equal Opportunity Advisory Council. The staff also drafted the statewide record retention policy for documents unique to the Office of the Attorney General.

In keeping with the Attorney General's priority of ensuring staff has access to the latest information and training available, and in furtherance of their professional development, the *AG Institute* provided continuing education to legal and nonlegal staff on a variety of topics. During Fiscal Year 2004, the *AG Institute* offered 60 programs and brought in seven "Distinguished Lecturers."

## OUTREACH, EDUCATION, AND TRAINING

During Fiscal Year 2004, the staff of the General Counsel's Office provided training to state and local government agencies on open meeting law issues and public records law matters. Other staff members were active in the Boston and American Bar Associations where they functioned in leadership positions on various committees. They also served as panelists and speakers at NAAG seminars, Massachusetts Continuing Legal Education forums, and other legal programs offered across the country sponsored by the various bar associations noted above. A staff member made a presentation at a career forum at an area law school. Members of the staff also participated in the Citizen Schools mock trial program and volunteered as tutors in its Eighth Grade Academy, and worked with other community groups in their own neighborhoods.

## HUMAN RESOURCE MANAGEMENT OFFICE

The Human Resource Management (HRM) Office is responsible for job vacancy announcements, the recruitment and hiring of employees, benefits administration, performance appraisals, and the coordination of hiring for legal and collegiate interns. During Fiscal Year 2004, staff members included Diana LaRochelle, Director; Joyce Delgado; Sandra Macdonald; Lauren Murray; and Joseph Shea.

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## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

### ANTI-DISCRIMINATION AND SEXUAL HARASSMENT POLICY

The HRM Office reissued the Anti-Discrimination and Sexual Harassment Policy in April 2004 to all employees, contractors, volunteers, and interns. The Office of the Attorney General remains committed to the goal of having a workplace that is respectful, inclusive, and diverse, and reinforces that commitment on a continuing basis.

### OFFICE-SPONSORED BAR ASSOCIATION MEMBERSHIPS

In addition to sponsoring memberships for all attorneys in the Boston Bar Association or a county bar association, assistant attorneys general also were offered the opportunity to join one of the many minority and women's bar associations in Massachusetts. This benefit was continued from previous years to further the Office of the Attorney General's commitment to enhance attorneys' professional development, and to encourage involvement with organizations comprising diverse members and experience.

### LEGAL AND COLLEGIATE INTERN PROGRAMS

The Office of the Attorney General continued its strong commitment to the Legal and Collegiate Intern Programs during Fiscal Year 2004. Each winter, the HRM participates in the Massachusetts Law School Consortium interview process to recruit and select summer legal interns. In addition to this valuable source of candidates, HRM coordinates and holds dozens of interviews in late winter and early spring with students from numerous law schools.

HRM placed 77 law students in the Office, the majority of whom took part in the Summer Legal Intern Program. The law students participate in a full-time, structured nine-week summer program which is unfunded, and is aimed at both utilizing their knowledge and giving them hands-on experience and training in some of the most interesting legal cases in the Commonwealth.

The Collegiate Intern Program attracts a large number of applicants throughout the year, but has the largest component during the spring and summer months. In Fiscal Year 2004, the HRM placed 94 collegiate interns. These interns volunteer at least 15 hours per week, and are assigned in all five bureaus across the Office. The term of their internships varies from student to student, but often exceeds nine weeks.

Additionally, three assistant attorneys general run clinical programs throughout the year for students at area law schools — Harvard Law School, Boston College Law School, and the New England School of Law.

## PERSONNEL ACTIVITY

During Fiscal Year 2004, the Attorney General's Office hired 34 attorneys and 56 nonlegal staff, for a total of 90 employees. There were 80 staff members who separated from the Office.

## EXTERNAL AFFAIRS OFFICE

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The External Affairs Office of the Executive Bureau responds to the daily needs of the public and the legislature. It serves as a direct liaison between the community, legislature, and the Attorney General.

In Fiscal Year 2004, the External Affairs Office included the following staff members: Stephen Kerrigan, Director; Amanda Coulombe; Leah Green; Janis Noble; Sally Ogine-Noel; Lori Suher; and Tom Weber.

## COMMUNITY LIAISON

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The Community Liaison is responsible for constituent services. The position was created as a resource for citizens to obtain information for either internal or external assistance through e-mail, letters, telephone calls, or office visits. In 2004, we received approximately 5,662 e-mail requests and 2,698 telephone calls.

## OFFICE OF COMMUNITY PARTNERSHIPS

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Attorney General Reilly created the Office of Community Partnerships to work with Massachusetts mayors, other urban leaders, and local town officials to address issues that relate to our communities, particularly as they affect the health and safety of our children, environmental concerns, and housing issues. Community Partnerships acts as a direct liaison between the Office of the Attorney General and the state's cities and towns.

## LEGISLATIVE AFFAIRS DIVISION

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The Legislative Affairs Division is responsible for establishing and implementing the Attorney General's legislative agenda. The Legislative Affairs Division directs legislative policy, coordinates the filing of legislation, and approves written and oral testimony. The division provides external liaison services, including apprising legislators of issues that may impact their communities and responding to their calls and correspondence with regard to constituent problems and legislative concerns. In addition,

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the division disseminates legislative information throughout the bureaus, acting as an internal liaison between the legislature and the Office of the Attorney General. The Legislative Affairs Division advises the Attorney General on matters of policy and participates in the overall development and implementation of office-wide initiatives.

## **INFORMATION TECHNOLOGY DIVISION**

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The Attorney General's Information Technology Division (IT Division) is responsible for the operation and maintenance of the agency's computer network and related technical resources. The division operates a wide area network (WAN) at One Ashburton Place, which provides connectivity between the Boston offices at One Ashburton Place, 100 Cambridge Street, and 200 Portland Street and the local area networks (LANs) installed in the regional offices in Springfield, Worcester, and New Bedford.

The IT Division's mission is to maintain network communications and provide hardware, software and end-user assistance for all agency staff in all locations. The division's staff supports over 20 servers hosting mail, databases, and other applications and equipment providing DNS and firewall services. In addition, the technical staff oversee a number of routers, network switches, and over 600 computer devices, including desktop PCs, Notebook PCs, printers, scanners, and other peripheral equipment.

During Fiscal Year 2004, IT Division staff included: Paula M. Durant, Director; Claudette Clement, Administrative Coordinator; Bruce Crosby, Technical Support Specialist; Jean Exantus, Technical Support Specialist; Christine Heneghan, Notes Database Administrator; Jack Ngan, Technical Support Specialist; Ronald Rossetti, Network Manager; Visakha Samaraweera, Relational Database Developer; and Thomas Smith, LAN Manager.

## **SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES**

The Office of the Attorney General continually works to improve the quality of its technical resources. In Fiscal Year 2004, the IT Division made improvements to its network backbone equipment so that server communications and switching equipment now operate at gigabit speed, further enhancing network performance and client/server communications.

As part of the relocation project that moved the Public Protection and Business and Labor Protection Bureaus to new offices at 100 Cambridge Street, the IT Division designed and implemented a copper/fiber network connecting the new space to the agency's main computer room at One Ashburton Place.

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Utilizing a fiber connection between the buildings saved the agency the cost of installing and maintaining another, separate T1 connection, and provided the opportunity to consolidate servers and tasks at the main location. Desktop and printer upgrades were made as needed, and IT staff continued to focus on network security and virus protection.

Along with agency-wide improvements, the IT Division also responded to the needs of particular divisions. During Fiscal Year 2004, the IT Division worked with the Medicaid Fraud Control Unit to acquire litigation support software and helped implement scanning solutions to assist with document management. The division also worked with the Medicaid Fraud Control Unit and the Corruption, Fraud, and Computer Crime Division to acquire additional computer forensics equipment and resources.

Enhancements made at the desktop level included acquiring and installing additional scanning equipment and software to provide individual bureaus with the speed and flexibility needed to meet their imaging requirements without reliance on the centralized Multimedia Unit.

## **OUTREACH, EDUCATION, AND TRAINING**

As in past years, the Information Technology Division strives to provide a high quality of end-user assistance. Help Desks were staffed both at Ashburton Place and at 200 Portland Street, where IT staff members received and responded to user calls encompassing a wide variety of issues. Orientation sessions are conducted for new employees and interns upon start of work, and in addition to issuing new feature instructions, policy reminders, virus alerts and technical bulletins, the IT staff provides individual and group training as needed.

## **BUDGET OFFICE**

As in Fiscal Year 2003, a challenge for the Budget Office was to provide for the ever-increasing needs of the Office of the Attorney General while anticipating that Fiscal Year 2004 funding would be reduced or level funded. However, the most important activity of the Budget Office in Fiscal Year 2004 was to prepare for the transition to a new and completely different statewide accounting system, to be implemented at the start of Fiscal Year 2005 on July 1, 2004. Budget Office staff were involved with training, account preparation, and many other activities that would be crucial to conducting business as usual at the start of the new fiscal year. Little of the old system terminology or process would be part of the new accounting system. This transition would result in the close of Fiscal Year 2004 in the old system and the start of Fiscal Year 2005 in the new system.



During Fiscal Year 2004, Budget staff processed over 11,300 payment voucher (PV) documents totaling \$15,176,582. Among these totals were 2,450 PVs totaling \$3,010,132 to victims of violent crimes and 1,165 PVs to claimants that benefited from wage recovery settlements or other settlements made with various retailers.

In Fiscal Year 2004, the Budget Office included the following staff members: Frank Velluto, Director; James Creedon; Michael Duggan; Kerisotellia Ford; Jennifer Hanly; Shanita Hill-Davis; Penny Michalski; and Gail Sarno.

## **OPERATIONS DIVISION**

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The Operations Division provides professional, timely, and valuable ancillary services that allow the Office of the Attorney General to effectively carry out its mission. The multitude of initiatives, functions, cases, and day-to-day business activities are supported by the technical ability within the realm of the Operations Division. In Fiscal Year 2004, the division continued to be fully engaged in daily facility and operational matters, and supported the Office of the Attorney General staff with the latest multi-media technology enabling them to effectively and efficiently perform their duties.

In Fiscal Year 2004, division staff included: Kristine Hill, Director; Chris Adams; Tony Melius; Kevin Nolan; Pasha Polihronidis; and Michael Whelan. The Support Services Division included: William Coughlan, Manager; Joseph Barnes; Stephen Cress; Tim LeBlanc; Nestor Morales; Dave Scafati; and Harold Tafler.

## **SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES**

In Fiscal Year 2004, the Boston offices of the Attorney General were relocated. Operations Division assisted with this significant project, moving staff from One Ashburton Place and 200 Portland Street to the newly renovated Saltonstall Building at 100 Cambridge Street. This project required a collaborative effort from all affected divisions and the Operations Division, which resulted in a successful transition without incident. Operations staff coordinated over 2,000 boxes of archived documents for delivery and storage, prepared new office space for staff occupancy, worked closely with the moving company to ensure accurate delivery of files and equipment, processed security access cards, and inventoried all new office furniture.

Two significant matters that required the full services of Operations were the issuance of the Archdiocese Report and the Brown Rudnick Tobacco Fees. The release of the Archdiocese Report required Operations staff to not only prepare for a high-profile press event, but also required careful coordination and technical ability to accommodate a live television broadcast. The Operations staff provided this support in conjunction with other divisions to effectively provide the technical capacity to support local and national coverage of this historic event. Equally important was the ancillary support provided for the high-profile tobacco fees case, which required daily delivery, set-up, and retrieval of case documents and equipment. Complex trial exhibits, graphs of numerical data and PowerPoint presentations are examples of the tools provided by Operations for these cases and many others.

Operations also played a major role in the technical set-up and coordination of the September 2004 Garden of Peace Ceremony and reception, which took place on the plaza of 100 Cambridge Street. This emotional ceremony honored homicide victims with a program that included speakers, a monument dedication, musical arrangement, and a candlelight vigil. Over 2,500 people attended this event. Operation staff received high praise from agency officials regarding their professionalism, dedication, and significant contribution to the event.

Other functions within the scope of Operations include vehicle maintenance, staff parking, acquisition and maintenance of emergency remote communications devices, responding to facility alarms, emergency building evacuation plans, and general physical plant upkeep.

## COMMUNICATIONS OFFICE

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The Communications Office coordinates all media-related matters for the Office of the Attorney General. The chief responsibility of the Communications Office is to serve as a centralized public voice for the agency. To that end, the Communications Director and Deputy Press Secretaries work with Executive staff and Bureau Chiefs to ensure that the Attorney General's priorities are reflected in all public statements and materials, including press releases, advisories, public statements, interviews, publications, the Attorney General's Web site ([www.ago.state.ma.us](http://www.ago.state.ma.us)), and other public appearances and events.

To effectively communicate within the agency and with the public, the Communications Office has implemented policies to handle media inquiries, create publications and brochures, and manage content on the Attorney General's Web site.

In Fiscal Year 2004 the Communications Office staff included: Ann E. Donlan, Director; Sarah Nathan; Beth Stone, and Corey Welford, Deputy Press Secretaries; and Jen Adams, Web site Manager.

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## WEB SITE

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In existence since December 1999, the Office Web site continued to expand during the Fiscal Year 2004. A site redesign launched successfully in June 2004. In addition to new design elements, the navigation and content were updated to give users more direct access to information on the site. A content management tool was implemented into the site and the posting process. This tool streamlines the posting process and gives additional employees the ability to post, such as Press and Human Resources. Current publications were added to the Web site in PDF and, if possible, HTML and RTF formats (for accessibility compliance). The site traffic reports demonstrated between 60,000 and 76,000 visitors per month.

## FRANCIS X. BELLOTTI LAW LIBRARY

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The library provides the Office of the Attorney General with the finest possible research facility and supports the research activities of the attorneys and staff. The collection includes 2,355 book titles and 161 periodical, law review, newspaper, and newsletter titles. The library contains the only complete index to Opinions of the Attorney General, town bylaw and zoning approval letters on microfiche, and Bid Protest Decisions and Advisory Opinions from the Fair Labor and Business Practices Division. The attorneys also have access to Westlaw for online searching of legal and newspaper databases. Library staff frequently assist individuals who are not affiliated with the Office in locating these materials. Outside individuals must make an appointment with the library in order to use the special collections.

The library joined the Boston Regional Library System in the fall of 2002, facilitating interlibrary loans from nonlegal libraries. Included with membership is access to OCLC, a national bibliographic database, which locates material nationwide.

During Fiscal Year 2004, the library staff included: Karin Thurman, Director; and Raymond Manigault.

## OUTREACH, EDUCATION, AND TRAINING

In Fiscal Year 2004, all new attorneys, paralegals, and interns received tours of the library and an introduction to the online Internet and CD-ROM databases available to them. During Fiscal Year 2004, 32 attorneys and paralegals, and 123 interns were trained. Westlaw training was mandatory for all new attorneys and available for any attorney wishing to expand his/her knowledge.

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# BUSINESS AND LABOR PROTECTION BUREAU

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FAIR LABOR AND BUSINESS PRACTICES DIVISION  
MEDICAID FRAUD CONTROL UNIT

# **BUSINESS AND LABOR PROTECTION BUREAU**

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## **FAIR LABOR AND BUSINESS PRACTICES DIVISION**

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The demands placed on the Fair Labor and Business Practices Division (FLBP) for Fiscal Year 2004 remained very high. The telephone hotlines continue to serve the public, who make over 1,350 inquiries per week. Callers are given appropriate recourse to handle their complaints and inquiries, many resulting in formal complaints being filed with the division, while others were given referrals to other agencies to assist them with their individual needs. The hotline has been supplemented by an improved Web site that has experienced a significant increase in the volume of inquiries made through the Workers' Rights section of the Web site. Complainants are able to download complaint forms with ease, due to the recent enhancements made to the Web site.

During Fiscal Year 2004, FLBP staff included Dan Field, Division Chief; Rosalyn Garbose, Deputy Division Chief; Randy Berg, Chief of Investigations; Jeremy Banks and Leah Green, Outreach Directors; Jeff Ambrose; Bruce Bergman; Bruce Bussiere; Cecile Byrne; Ronald Cabezas; Jay Clark; Nick Dean; Susan Decker; Joseph Drzyzga; Mary Dullinger; Patrick Faherty; Michelle Gamble; John Gatti; Paul Gordon; Alex Guardiola; Erika Gully-Santiago; Edward Horniak; Marsha Hunter; Tom Johnson; Jocelyn Jones; Barbara Kane; Patricia Kelleher; Noreen Kelly; Katharine Klubock; Robert Lamarre; Brian Macera; Jeffrey Mahoney; Anita Maietta; Mildred Markham; Katherine Mulligan; Mario Paiva; Iona Powell-Headley; Greg Reutlinger; Mario Rosado; Jed Ruccio; Elizabeth Rufo; Palmer Santucci; Steven Spencer; Bruce Trager; Theresa Ukleja; and Karla Zarbo.

## **SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES**

The division continues to take a multifaceted approach to ensuring compliance with the Massachusetts wage and hour laws, including enforcement, education, and outreach as well as oversight of public bidding requirements. The division also is responsible for reviewing and ruling on applications by businesses for waivers for certain workplace laws.

### **OVERALL INVESTIGATORY ACTIVITY**

Fair Labor and Business Practices received and investigated in excess of 3,300 formal complaints in Fiscal Year 2004. In many instances, FLBP's inspectors recovered payment of full restitution or provided another appropriate remedy to the aggrieved employee without initiating the civil citation process or

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litigation. In other cases, consistent with its law enforcement mission and approach, FLBP's staff employed its prosecution authority to pursue instances of unlawful conduct, and sought civil and criminal sanctions, which were imposed on workplace law offenders. Through these efforts, FLBP recovered in excess of \$2.1 million in wages that were owed, but unpaid, to Massachusetts workers as well as administrative and criminal penalties and costs.

#### PREVAILING WAGE ENFORCEMENT

Attorney General Tom Reilly continued to place a high priority on the enforcement of prevailing wage laws. FLBP inspectors conducted unannounced site inspections at numerous public construction projects across the Commonwealth to encourage compliance and a level playing field for all employers. During Fiscal Year 2004, FLBP investigators conducted over 174 site inspections related to public construction. The division increased its enforcement efforts over past years by issuing 108 prevailing wage citations, up significantly from prior years.

The following provides a representative sampling of prevailing wage cases undertaken by FLBP during Fiscal Year 2004:

- **Milton Marder** Defendant indicted on 12 counts of Larceny by False Pretenses and prevailing wage violations. These charges stemmed from multiple complaints and a lengthy investigation involving the exploitation of immigrant workers, who were performing work on public construction projects across the state. Sentencing pending. Proposed sentence will include jail time, restitution, and debarment.
- **Cameron Painting** Painting contractor signed Settlement Agreement with two intentional citations with restitution and penalties of \$10,000 for failing to pay prevailing wage in Belchertown (High School) and Springfield (Housing Authority).
- **Continental Contracting** Non-payment/Prevailing wage investigation. Citation issued for failing to pay 41 employees two-weeks pay for work performed in February 2003 on the Groton-Dunstable High School. Non-payment occurred when the company changed pay period from weekly to bi-weekly and subsequently left the project. Citation issued for \$76,063 in restitution and \$9,000 penalty. Company agreed to charges and to pay restitution.
- **Cornerstone Masonry** Prevailing wage case arising from employer's misclassification of employees as apprentices. Settlement Agreement reached, including payment of approximately \$37,000 in restitution, and a \$2,500 penalty.

- **Victor Perez, Percor, Inc.** Settlement Agreement reached with employer including an admission of willful conduct, restitution, and a \$6,500 penalty, arising from employer's failure to pay prevailing wages to 28 carpenters and laborers due \$72,023.11 in wages.
- **Kenbar, Inc.** Electrical contractor for Leominster Housing Authority misclassified an employee as an apprentice. Restitution \$3,000 and \$350 fine.
- **New England Piping** Issued four citations along with Settlement Agreement for prevailing wage violations on four projects. Total restitution for 17 employees was \$5,048.44, and \$1,940 in penalties.

#### PAYMENT OF WAGES ENFORCEMENT

Fair Labor and Business Practices is authorized to issue civil citations for violations of the wage and hour laws. A civil citation issued by FLBP can require the employer to comply with the law, pay restitution to the employees, and pay a civil penalty. FLBP has issued such citations to employers that fail to pay wages, overtime, the minimum wage, or prevailing wages, or who fail to provide certified payroll or other employment records required to be maintained and produced under Massachusetts law. During Fiscal Year 2004, FLBP issued 227 civil citations for violations of the payment of wages and prevailing wage statutes. This number represents a significant increase in enforcement action taken by the division as compared with the 165 civil citations issued in Fiscal Year 2003.

The following provides a representative sampling of unpaid wage cases undertaken by FLBP during Fiscal Year 2004:

- **Ground Round** Company declared bankruptcy February 19, 2004 and terminated virtually all employees owing wages and vacation pay. Three hundred ninety-three employees in Massachusetts were owed \$413,000. Partial payment of wages has been made. Awaiting balance of payment upon completion of auction. Previously, a letter from Attorney General Reilly was sent to all 3,100 Ground Round employees nationwide. The letter informed workers on steps they could take regarding wages, pension, and other benefits.
- **Commonwealth v. Cortell & Jason M. Cortell & Associates** Disposition and sentencing on charges of embezzlement by a fiduciary and general larceny arising from theft of profit-sharing plan assets, and failure to remit employee wage deductions to 401(k) plan. Defendant pleaded guilty to all charges. Terms include: One year in the House of Correction, suspended for five years, special condition six months of home confinement, payment of approximately \$240,000 in restitution on date of sentencing, and debarment from contracting with public agencies for five years.

- **MVP, Inc.** Settlement agreement with employer, which resolved impact of employer's retroactive change in its vacation policy affecting nearly 140 employees statewide, resulting in restitution in the amount of \$69,594.29 in unpaid wages.
- **Bilafer Landscaping Company** Bilafer pleaded guilty in 2002 on multiple violations of the wage and hour laws, and was placed on probation with a six-month suspended sentence until 2004. Bilafer was subsequently found to be in violation of the terms of his probation and was sentenced to 10 days in the House of Correction. Bilafer again violated the terms of his probation and was sentenced to serve six months in the House of Correction suspended until November 5, 2004 on six matters, and 20 days in the House of Correction on two matters. Bilafer subsequently paid all outstanding restitution in the amount of \$13,649.50, and fines and court costs of \$1,950.
- **Good Health, Inc.** Health food store agreed to pay 22 of its employees for premium pay owed for working Sundays in retail stores, totaling \$22,233.28 in restitution with \$4,950 penalty.
- **Marguerite Concrete, Inc.** Complaint received that this Franklin concrete company failed to pay overtime to employees. Payroll records were received from the company pursuant to a payroll demand covering a two-year period. An audit of the records revealed approximately \$51,208 was owed to 24 employees. Company has corrected the violations prospectively. Company has agreed to enter into Settlement Agreement, paying restitution in full and a \$4,000 penalty by July 31, 2004.
- **Mediplex Group, Inc. d/b/a Sunbridge Healthcare** Nursing home owner in Millbury sold the facility on July 1, 2003. Sunbridge had an agreement to fund Paid Time Off pool for employees to retain benefits with new owner. Discrepancies in the tracking of time between local and central management during changeover to centralized tracking system in April 2004 led to an under-funding of the pool. It was agreed that \$58,000 would be paid in restitution and penalties as part of a Settlement Agreement with a compliance plan.
- **TruGreen Lawn Care** Landscape company is subsidiary corporation of TruGreen/Chemlawn. Overtime complaint affecting 92 employees. Settlement Agreement with citation; \$63,000 in restitution and penalties.
- **Drive O'Rama, d/b/a Mill Stores, Inc. v. Office of the Attorney General, Fair Labor and Business Practices Division** Decision granting summary judgment in the Office of the Attorney General's favor in declaratory judgment action filed in Barnstable Superior Court, declaring



that “gift shop” retail employer is obligated to pay holiday pay to its hourly non-exempt workers on certain holidays, and that failure to do so is a violation of the Wage Payment Statute.

- **Best of Care** Non-payment of overtime investigation. This Raynham home health care agency admitted to not paying overtime and agreed to perform self-audit. Entered into Settlement Agreement and paid restitution of approximately \$23,000 to 39 employees.
- **Other non-payment cases** Another portion of the cases resolved by the division involved successfully concluding another 465 cases resulting in \$250 or less in restitution (\$57,543) for individuals, and another 290 cases resulting in restitution between \$251 and \$500 for individuals (\$105,184). The restitution for these low wage earners was in excess of \$162,700.

#### PUBLIC CONTRACTS OVERSIGHT

The Attorney General’s Office continued to provide a professional and accessible forum for the resolution of public construction bidding disputes, including investigating allegations of impropriety in connection with public-works project bidding. The Attorney General’s primary enforcement efforts in this area have been undertaken by FLBP’s Public Contracts Unit. The primary tool employed by the Public Contracts Unit includes adjudication of disputes through an administrative hearing process. In Fiscal Year 2004, the unit issued written decisions in 42 cases.

The unit also provided informal advice by telephone to the Commonwealth’s awarding authorities and contractors who bid on public-works projects. During Fiscal Year 2004, the Public Contracts Unit received thousands of written and telephone inquiries. The unit’s telephone support has become an established resource for contractors and awarding authorities. Telephone assistance also has served as a significant prevention tool, often delivering the information necessary to prevent (or quickly remedy) a violation of the public bidding laws.

Enforcement efforts also included an educational component that provided public contracting participants with information regarding the public bidding laws. Among other things, the Attorney General’s Office distributed the written public contracts bid protest decisions to the public construction community. In addition, FLBP’s staff participated in educational programs that provided substantive and procedural information to the construction industry and their counsel necessary to properly solicit or submit public-works construction bids. Such proactive efforts have served many useful purposes.

The following are two examples of significant public contract disputes resolved by FLBP in Fiscal Year 2004:

- **General Mechanical v. Town of Dedham** A HVAC sub-bidder intended to subcontract commissioning of Automatic Temperature Controls system and other software work for the \$2.2 million HVAC subcontract. This was not “construction” labor for which a sub-subbid listing was required at Paragraph E of the statutory sub-bid form. Protest DENIED.
- **Millwrights Local Union # 1121 v. Massachusetts Port Authority** \$4 million contract for “maintenance” of a four-mile, conveyor belt baggage handling system that was bolted, wired and welded to Terminal E at Logan was a contract for repair of public-works that must be publicly bid. Protest ALLOWED.

### CHILD LABOR

The Attorney General remains committed to ensuring a safe workplace for the youth of the Commonwealth. During Fiscal Year 2004, FLBP inspectors investigated reports of child labor violations and conducted workplace site inspections, visiting businesses where minors were employed, noting violations and advising employers of their responsibilities and legal obligations to provide a safe and harmonious work environment for minors. The division also provided outreach to children through programs presented at the schools and through career day events.

Among the routine investigations handled throughout the year, the division also continued to monitor prior cases for compliance with the child labor laws.

**Dunkin’ Donuts** FLBP continues to monitor a three-year compliance plan following an investigation that revealed thousands of child labor and wage violations. The agreement included a \$150,000 civil fine as well as an oversight plan by an outside auditor. The Attorney General’s Office and the United States Department of Labor conducted second and third round training sessions for Dunkin’ Donuts managers. The Office also conducted training for 300 franchise owners and managers as part of a multi-agency New England training.

### WAIVERS AND INDUSTRIAL HOMEWORK

FLBP is charged by statute with the authority to waive certain requirements of the labor laws under certain conditions. During Fiscal Year 2004, FLBP processed more than 340 waiver applications and industrial homework certificate requests. Each request for a waiver was carefully evaluated before a determination was made to grant or deny the request. FLBP enforced the industrial homework laws (work performed for a company in the employee’s home) by issuing permits to the employers and certificates for each employee, where applicable. FLBP also monitored these companies to ensure compliance with the minimum wage and overtime laws.

## STATISTICAL SUMMARY

Restitution Recovered	In excess of \$1,971,045
Hotline Calls	In excess of 70,578
Formal Complaints Filed	3,381
Cases Closed	3,292
Civil Citations Issued	227
Public Contract Dispute Decisions	42

## OUTREACH, EDUCATION, AND TRAINING

Attorney General Reilly has long believed that public education plays an important part in promoting compliance with workplace laws. Accordingly, outreach to the employee and employer communities, and their unions, trade associations, counsel, and other advocates, has been a FLBP priority. One means to this end has been FLBP's telephone hotline, which has served as an information source for workers and businesses. In Fiscal Year 2004, the FLBP hotlines received over 70,500 inquiries. In many instances, workers were apprised of their rights and were assisted in obtaining their rightful wages.

The Immigrant Worker Outreach Project, established several years ago, has sustained the test of time. Due to the successful establishment of this program, FLBP continues to receive a large volume of complaints and referrals from the immigrant community. FLBP staff members made several presentations to immigrant advocacy groups during the year to maintain this important program. The program also began to make presentations to employer groups in an effort to educate that group regarding their rights and responsibilities concerning immigrant employees.

Outreach was conducted in other areas as well. During Fiscal Year 2004, FLBP staff made a total of 52 presentations to bar association and continuing legal education groups, professional organizations, trade associations, labor unions, and employee advocacy groups. These presentations covered topics

such as wage and hour laws, employee and employer rights and responsibilities under these laws, worker classification under the prevailing wage law, and the treatment of accrued vacation time as wages.

The division has also sought to educate relevant communities about wage and hour issues through the production and distribution of advisories and other publications, including a Minimum Wage and Workplace Rights poster. Currently, the division has such publications in eight different languages.

## **MEDICAID FRAUD CONTROL UNIT**

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The Medicaid Fraud Control Unit (MFCU) was established to protect the Massachusetts Medicaid program from fraudulent practices. The Office of Medicaid administers the provision of over \$6 billion of health care services to over 900,000 indigent and disabled recipients in Massachusetts. In addition to prosecuting corporate and individual health care providers that commit crimes against the Medicaid program, MFCU also was responsible for prosecuting companies and individuals, whom abused, neglected, or mistreated elderly and disabled residents of the Commonwealth's 525 long-term-care facilities, most of which have been funded extensively by the Medicaid program.

During this reporting period, Attorney General Tom Reilly's MFCU remained committed to aggressively investigating and prosecuting Medicaid provider fraud, and those who abuse, neglect, or financially exploit elder and disabled residents of long-term-care facilities. The MFCU brought several recovery actions utilizing the state's civil Medicaid fraud statutes, and reviewed over 529 patient abuse and neglect referrals. In addition to the criminal cases reported herein, the Massachusetts MFCU returned \$13,233,595.26 to the Medicaid program through restitution, fines, and penalties.

Recognizing that Medicaid fraud is complex and costly to prosecute, the federal government has provided approximately 75% of the funding for MFCU's operation. Among its counterparts in other states across the nation, Attorney General Reilly's MFCU has been a leader in the number of successful criminal prosecutions and affirmative civil actions it has produced.

MFCU included the following staff members during Fiscal Year 2004: Nicholas J. Messuri, Division Chief; David Marks, Deputy Division Chief; Steve McCarthy, Deputy Division Chief and Chief of Investigations; Steven Devlin, Deputy Chief of Investigations; Ann Ackil; Bruce Anderson; Al Brown; Eileen Casey; Julie Chattopadhyay; Peter Clark; John Curley; Bessie Curtis; Catherine Fielding; Richard Heidlage; Linda Landry; Teresa Ho Liu; Anthony Megathlin; Thomas O'Neill; Robert Patten; Shirley Rokosz; Mike Russo; Joseph Shea; Susanne Snow; Christine Soloperto; Jody Soucie; Toby Unger; and Kris Wilhelmi.

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## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

During Fiscal Year 2004, MFCU brought both criminal and civil enforcement actions against hospitals, nursing home owners, pharmacies, physicians, dentists, home health care companies, billing intermediaries, and other medical providers. These enforcement actions focused on providers that misrepresented the services they provided to the Medicaid program, inflated the costs of their services, provided medically unnecessary services, or violated Medicaid's anti-kickback laws. As a result of its efforts, MFCU initiated and conducted approximately 160 investigations, in addition to reviewing over 500 patient abuse and neglect referrals, obtained indictments, and secured convictions against corporate and individual defendants.

In the past fiscal year, a great deal of MFCU attention was focused on prescription drug pricing, from two very different perspectives: (1) manufacturer price inflation through average wholesale price (AWP) fraud, kickbacks, and other schemes; and (2) diversion of prescription drugs for non-medical use by physicians and other providers. Much of the work on the first set of investigations is being undertaken with various MFCUs in other states and the United States Attorney's Office. MFCU has also continued to devote resources to its mission of protecting elders in nursing homes, through prosecution of abusers, investigation of financial fraud by nursing homes and elder care facilities, and coordination with the Department of Public Health's Division of Health Care Quality.

In addition, MFCU investigated physicians and psychiatrists who prescribed controlled substances for non-medical reasons, or that were not supported by medical diagnosis or necessity. MFCU investigated dentists and durable medical equipment companies for upcoding and unbundling their services. MFCU also looked at the area of pharmacy chains and pharmaceutical companies that overcharged the Medicaid program, and inflated the costs of prescription drugs. In Fiscal Year 2004, MFCU also investigated the relationships between physicians, hospitals, and laboratories to detect illegal referrals, kickbacks, and issues of substandard patient care.

## SIGNIFICANT CASE SUMMARIES

Consistent with its mission to protect the Medicaid program on a statewide basis, MFCU made extensive use of the Special Grand Jury sitting in Boston as well as its statutory and regulatory discovery authority, to obtain indictments and convictions, and to recover funds for the Medicaid program well in excess of its budget.

With increased professional training and a multi-disciplinary approach to investigating and prosecuting health care fraud and nursing home abuse, the Massachusetts MFCU is proud to highlight the following significant case activities during this reporting period. These accomplishments represent a sampling of activities during this period and do not reflect all cases handled by the Unit during the fiscal year.

The following is a sample of cases undertaken by MFCU during Fiscal Year 2004.

#### PHARMACEUTICAL PRICING

- **Massachusetts MFCU files suit against 13 of Nation's Leading Generic Pharmaceutical Manufacturers** Attorney General Tom Reilly's MFCU filed suit against 13 of the nation's leading generic pharmaceutical manufacturers, alleging that they separately participated in pricing and marketing schemes that resulted in a loss of more than \$50 million to the state Medicaid program. The case is pending in the United States District Court for Massachusetts.
- **Abbott-Ross** \$836,123.42 returned to Massachusetts Medicaid based on allegations that Abbott-Ross fraudulently billed for enteral feeding pumps and supplies.
- **GlaxoSmithKline** \$1,797,016.21 returned to Medicaid based on allegations that GlaxoSmithKline violated Medicaid "Best Price" requirements through the labeling of anti-depressant Paxil and inhalant Flonase, specifically for Kaiser Permanente.
- **Bayer** \$3,727,074.52 returned to Medicaid based on allegations that Bayer violated Medicaid "Best Price" requirements through the labeling of antibiotic Cipro and anti-hypertensive Adalat CC, specifically for Kaiser Permanente.
- **Schering-Plough** Pharmaceutical manufacturer paid \$9,949,026 to the Massachusetts Medicaid program to settle charges that it avoided its responsibility to pay rebate funds by failing to report discounts and other improper inducements to keep health maintenance organizations providing the antihistamine Claritin.

#### MEDICAL EQUIPMENT AND SUPPLY COMPANIES

- **Elaine Mishel Shoe Store** A Brighton-based durable medical equipment company agreed to repay more than \$336,000 to the state Medicaid program, and was banned from future participation.

- **All American Home Aid** A Brighton-based durable medical equipment company entered into a civil settlement agreement with MFCU and the Division of Medical Assistance to resolve \$175,000 in Medicaid Program overpayments.

#### PHARMACIES

- **Richard Bonneau and New Bedford Pharmacy, Inc.** A New Bedford pharmacist and pharmacy corporation pleaded guilty to 31 counts of larceny over \$250, and Medicaid fraud for fraudulently submitting claims to Medicaid for filling prescriptions that were never ordered by physicians and/or never obtained by patients. The pharmacist was sentenced to 18 months in the House of Correction, suspended for three years, and ordered to pay restitution of \$85,747 within six months to the Medicaid program.

#### PHYSICIANS

- **Vasant Thacker, M.D.** A Belmont physician agreed to pay the state and federal governments a total of \$203,427 to resolve claims that she exaggerated the level of patient visits billed to Medicare and Medicaid.
- **Frederick Wagner, OD** A Melrose optometrist agreed to repay the state Medicaid program \$50,000 for payments he obtained by submitting improper claims for optometry services to elderly nursing home residents. The optometrist billed the state Medicaid program for more costly and complex eye examinations than he actually performed.

#### NURSING HOMES

- **Commonwealth v. Isaac Joseph** A former certified nursing assistant was charged with multiple criminal complaints for patient abuse and assault and battery on five elderly Alzheimer nursing home residents.

#### HOME HEALTH

- **VNA of Middlesex-East** A Wakefield visiting nurse association repaid the Massachusetts Medicaid program \$88,990 for overpayments made after the agency submitted erroneous claims.

### STATISTICAL SUMMARY

Health Care Fraud Investigations	82
Formal Health Care Fraud Cases Opened	62

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Formal Health Care Fraud Cases Closed	37
Patient Abuse Referrals Reviewed	529
Patient Abuse Investigations	139
Formal Patient Abuse Cases Opened	3
Formal Patient Abuse Cases Closed	3
Civil Dispositions	12
Criminal Indictments	1
Criminal Dispositions	0
Restitution and Fines Recovered	\$13,233,595.26

### OUTREACH, EDUCATION, AND TRAINING

Outreach and education initiatives have served as integral components in maintaining MFCU's high level of efficiency. MFCU staff had regular dealings with the Division of Medical Assistance, which administers the Medicaid program, in connection with a range of issues, including working with the Department of Public Health and the Pharmacy Board in an effort to ameliorate prescription drug abuse, including OxyContin. MFCU also worked with the Department of Mental Health in connection with patient abuse issues. In addition, staff were involved in a drug diversion taskforce with the Massachusetts State Police and the DEA. MFCU's Director of Investigations continues to lead the Northeast Healthcare Law Enforcement Association's efforts in coordinating joint investigations and training for the Northeast MFCUs. MFCU staff also were actively involved with the Boston office of the FBI on a healthcare fraud working group.

MFCU staff continued to take advantage of the rich training opportunities available nationwide to health care law enforcement personnel, with several new investigators and lawyers attending multi-day trainings and conferences. The Massachusetts MFCU Director served as Vice President of the National Association of Medicaid Fraud Control Units. The Association coordinates multi-state investigations and creates and sponsors health care fraud training sessions for AAGs and investigators. Staff also continued to attend in-house programs that targeted areas such as improved courtroom techniques.



The Massachusetts MFCU is committed to providing its personnel with training and education regarding current techniques and information pertinent to the objectives of the unit. A substantive “in-house” training program has been maintained to augment the staff’s knowledge regarding administrative and procedural operations.

The MFCU’s training directive is consistent with Attorney General Reilly’s overall commitment to enhancing the breadth, quality, and professionalism of services provided by the Office of the Attorney General. In addition, assistant attorney generals, investigators, and support staff have participated in training seminars and conferences offered by various state, federal, and national organizations. External training opportunities provided a major vehicle through which the MFCU staff stayed abreast of investigative and prosecutorial techniques and developments; and allowed for the exchange and discussion of information and ideologies with colleagues from multi-disciplinary perspectives.

MFCU staff made numerous presentations on Medicaid fraud prevention and health law to outside groups, such as the Healthcare Corporate Compliance Conference, National Association of SURS Officials, Colleges and Universities, and the Medical Payment Systems Association. Staff also gave presentations on elder abuse and attended programs aimed at enhancing prosecution of this heinous crime.

During the upcoming year Attorney General Reilly will continue to target health care providers that commit Medicaid provider fraud as well as caretakers who abuse and neglect elder and disabled citizens.

# CRIMINAL BUREAU

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APPELLATE DIVISION

CORRUPTION, FRAUD, AND  
COMPUTER CRIME DIVISION

VICTIM/WITNESS ASSISTANCE DIVISION

SPECIAL INVESTIGATIONS AND NARCOTICS DIVISION

ENVIRONMENTAL CRIMES STRIKE FORCE

INSURANCE AND UNEMPLOYMENT FRAUD DIVISION

CRIMINAL JUSTICE POLICY DIVISION

VICTIM COMPENSATION AND ASSISTANCE DIVISION

FINANCIAL INVESTIGATIONS DIVISION

SAFE NEIGHBORHOOD INITIATIVE DIVISION

## CRIMINAL BUREAU

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The Attorney General's Criminal Bureau has four broad missions: investigate and prosecute violations of state criminal law, promote effective law enforcement, criminal justice, and crime prevention, and provide assistance to crime victims.

The Criminal Bureau's staff of experienced Assistant Attorneys General, State Police detectives, and investigators focus on investigating and prosecuting violations of state criminal law that result in or involve significant economic loss or injury, harm to the environment, misconduct by public employees or elected officials, crimes against public agencies, organized crime, large-scale drug trafficking, complex criminal conspiracies, consumer fraud, and crimes involving computers and other forms of technology. The majority of criminal cases prosecuted by the Criminal Bureau result from investigations conducted by the Bureau's 23 State Police detectives, three Environmental Police officers, and seven civilian investigators. Cases are developed through citizen complaints and referrals from other local, state, and federal agencies. During Fiscal Year 2004, the Criminal Bureau received more than 2,243 inquiries and complaints from citizens and other agencies. Additionally, Assistant Attorneys General in the Criminal Bureau reviewed 89 rendition and extradition requests forwarded to the bureau by the Executive Office of the Governor.

Assistant Attorneys General assigned to the Criminal Bureau represent the Commonwealth in criminal prosecutions throughout the state, handle proceedings in state and federal courts challenging criminal convictions, and represent prosecutors, judges, and other state criminal justice employees who are sued in the performance of their duties.

The Criminal Bureau promotes effective law enforcement through its Criminal Justice Policy Division. This division reviews crime data and trends, proposes legislation, participates in training programs for law enforcement officers and other criminal justice professionals, and maintains working relationships with many local, state, and federal criminal justice agencies. Through these working relationships, bureau members regularly convene or participate in multi-agency working groups dealing with criminal justice issues, such as anti-terrorism planning, drug and alcohol abuse, court and sentencing reform, prisoner re-entry initiatives, domestic violence, juvenile justice, and child abuse.

The Criminal Bureau's Safe Neighborhood Initiative Division promotes crime prevention in communities by fostering partnerships between schools, community groups, prosecutors, police officers, courts, and other criminal justice professionals. Through these partnerships, the division helps communities implement crime prevention programs and other initiatives to prevent and deter involvement in crime, steer those involved in minor criminal offenses into prevention programs, and

aggressively prosecute those responsible for crimes that severely impact the community's quality of life. During Fiscal Year 2004, there were Safe Neighborhood Initiative programs in Taunton, Brockton, Lawrence, Methuen, Orange, and the Dorchester and Grove Hall sections of Boston.

The fourth primary mission of the Criminal Bureau is to provide support to victims of crime. The Bureau's Victim Compensation and Assistance Division provides financial support and social services assistance to crime victims and relatives of homicide victims. The division reaches victims and their families through outreach efforts and relationships with police departments, court officials, and social service agencies. During Fiscal Year 2004, the division received more than 1,200 applications for financial assistance from crime victims and their family members, and distributed almost \$3 million to these victims and family members.

In April 2004, the Insurance and Unemployment Fraud Division (IUFD) was transferred from the Business and Labor Protection Bureau to the Criminal Bureau. IUFD has as its core mission the investigation and prosecution of fraud against all types of insurers in Massachusetts, and against the Commonwealth's unemployment security system. Prior to 1993, such crimes were prosecuted through the Criminal Bureau. The return of the division to the Criminal Bureau has allowed for greater coordination on cases involving a range of white-collar criminal offenses and has facilitated communication with the State Police on insurance fraud investigations.

The Chief of the Criminal Bureau is Kurt N. Schwartz. The Deputy Chief of the Bureau is Michele L. Adelman.

The Criminal Bureau is organized into the following divisions, each of which reflects an area of specialization and expertise: Appellate; Corruption, Fraud, and Computer Crime; Victim/Witness Assistance; Special Investigations and Narcotics; Environmental Crimes Strike Force; Insurance and Unemployment Fraud; Financial Investigations; Criminal Justice Policy; Safe Neighborhood Initiative; Victim Compensation and Assistance; and State Police Detective Unit.

The Divisions Chiefs within the Criminal Bureau during Fiscal Year 2004 were: Appellate Division, Cathryn Neaves; Corruption, Fraud, and Computer Crime Division, John A. Grossman; Victim/Witness Assistance Division, Kathleen Morrissey; Special Investigations and Narcotics Division, William F. Bloomer and thereafter Eileen O'Brien; Environmental Crimes Strike Force, Paul J. Molloy; Insurance and Unemployment Fraud Division, Eliot Green; Financial Investigations Division, Paul Stewart; Criminal Justice Policy Division, James O'Brien; Safe Neighborhoods Initiative, Ellen Frank; Victim Compensation and Assistance Division, Cheryl Watson, and thereafter Deborah Fogarty; State Police Detective Unit, Captain Stephen Matthews.

The Criminal Bureau also had two bureau attorneys during Fiscal Year 2004. Assistant Attorney General Mary A. Phillips served as the Bureau's Grand Jury Coordinator, and Assistant Attorney General Beth Merachnik served as the Senior Litigation Counsel for the bureau.

## APPELLATE DIVISION

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The Appellate Division handles a wide variety of criminal, federal habeas corpus, state habeas corpus, and other civil cases that impact criminal prosecutions and the criminal justice system. The division's caseload includes appeals and post-conviction matters in criminal cases prosecuted at the trial level by the Attorney General's Criminal Bureau, and from convictions of criminal contempt throughout the Commonwealth; all habeas corpus petitions filed in federal court that challenge Massachusetts convictions, parole surrenders, civil commitments, and renditions; and appeals in the First Circuit Court of Appeals from the denial or granting of habeas corpus relief. The division also engages in civil litigation defending judges, clerks, probation officers, and other court personnel sued civilly in state or federal court for actions taken during the criminal justice process. The Assistant Attorneys General in the division defend the constitutionality of criminal statutes as well as other statutes, court rules, practices, and procedures that concern all aspects of the criminal justice system; represent the interests of prosecutors when subpoenaed to testify or provide documents in federal civil cases; supervise agency staff attorneys handling litigation involving the Department of Correction, the Parole Board, and the Commissioner of Probation; and handle appeals and federal court litigation concerning the Parole Board.

In addition to their casework, division attorneys provide assistance to other Criminal Bureau attorneys on investigations, motions, trials, post-conviction proceedings, and single justice actions, and consult with or assist other bureaus in matters where the criminal justice expertise or perspective is important. The division also works closely with the District Attorneys' Offices, especially their Appellate Divisions, in identifying and acting as a clearinghouse on criminal law issues of statewide importance and interest.

The Appellate Division files approximately 50 appellate briefs per year in the United States Supreme Court, Court of Appeals for the First Circuit, Supreme Judicial Court, and Massachusetts Appeals Court. The division files *amicus* briefs on behalf of the Attorney General in cases having broad impact and importance to the criminal justice system, consistent with the Attorney General's statutory responsibility as the chief law enforcement officer of the Commonwealth. The division also files in the United States District Court approximately 130 substantive memoranda of law per year in opposition to federal habeas corpus petitions.

The Appellate Division included Cathryn Neaves, Division Chief; James Arguin; Eva Badway; Annette Benedetto; Olivia Blanchette; David Lieber; Dean Mazzone; Maura McLaughlin; Natalie Monroe; Susanne Reardon; Michelle Sheridan; Daniel Smulow; and Linda Wagner.

### SIGNIFICANT CASE SUMMARIES

- **Sarourt Nom v. Luis Spencer** (First Circuit) Appeal from denial of federal habeas petition challenging Middlesex County conviction for first-degree murder. On July 29, 2003, the First Circuit affirmed the district court's denial of habeas relief.
- **Arthur Jackson v. William Coalter** (First Circuit) Appeal from denial of federal habeas petition challenging 1998 Suffolk County conviction for armed robbery. On July 28, 2003, the First Circuit affirmed the district court's order denying habeas relief.
- **Felix Santiago v. Luis Spencer** (First Circuit) Appeal from denial of federal habeas petition challenging ability of Commonwealth to retry the juvenile in Suffolk County for murder after he passed jurisdictional age for juvenile court, claiming ex post facto violation and due process violation. On September 22, 2003, the First Circuit affirmed the district court's denial of habeas relief.
- **Juan Castillo v. James Matesanz** (First Circuit) Appeal from denial of federal habeas petition challenging 1996 Essex County trafficking conviction. On October 22, 2003, the First Circuit affirmed the district court's denial of habeas relief.
- **Commonwealth v. Frederic Lepper** (Massachusetts Appeals Court) Appeal from conviction for larceny scam. On November 19, 2003, the Appeals Court affirmed the defendant's convictions for multiple larcenies.
- **Roger Norton v. Luis Spencer** (First Circuit) Appeal from a district court order granting a writ of habeas corpus in a challenge to a Hampden County conviction for indecent assault and battery. On October 30, 2003, the First Circuit affirmed the district court's order granting a writ of habeas corpus.
- **Carlos Luna v. Commonwealth** (First Circuit) Appeal from district court's denial of federal habeas petition challenging Suffolk County convictions for perjury and for filing false police reports concerning the investigation of the murder of Sherman Griffiths. In October 2003, the First Circuit affirmed the district court's order denying habeas relief.

- **Commonwealth v. Maxine Sneed** (Supreme Judicial Court) Commonwealth's appeal from an order of the Boston Municipal Court that suppressed the defendant's statements in a pending prosecution for larceny premised upon an alleged Miranda violation. In October 2003, the full court vacated the order granting the motion to suppress.
- **Joseph DeCicco v. Luis Spencer** (First Circuit) Appeal from denial of federal habeas petition challenging 1994 Suffolk County conviction for second-degree murder. On March 24, 2004, the First Circuit affirmed the district court's denial of habeas relief.
- **Russell Horton v. George Correia** (First Circuit) Appeal from denial of federal habeas corpus petition challenging 1998 Plymouth County convictions for first-degree murder and armed assault with intent to murder. On May 26, 2004, the First Circuit affirmed the district court's denial of habeas relief.
- **George Correia v. Timothy Hall** (First Circuit) Appeal from denial of federal habeas petition challenging 1996 conviction for Assault and Battery with a Dangerous Weapon. On April 16, 2004, the First Circuit affirmed the district court's denial of habeas relief.
- **Thomas Bates v. Michael G. Grant, Sr.** (First Circuit) Appeal from dismissal as unexhausted federal habeas petition challenging 1991 Worcester County convictions for, among others, rape of a child. On May 4, 2004, the First Circuit affirmed the district court's order dismissing the petition as unexhausted.

### STATISTICAL SUMMARY

	CASES OPENED	CASES DISPOSED	TOTAL CASES HANDLED
Federal Habeas	176	107	538
Federal Civil	14	6	65
State Civil	28	21	93
State Habeas	8	10	49

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Criminal	15	11	94
c. 211, § 3 and Other			
Single Justice Cases	16	6	40
<hr/>			
TOTAL	257	161	879

### SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

In addition to the large caseload handled by the division, the division became involved in a number of significant initiatives. Among these efforts were the following: Elder Task Force, Clerk, American Middle Eastern Lawyers Association, Paul McLaughlin Center, Volunteer Reader, and Council Member, Criminal Justice Section Council of the Massachusetts Bar Association.

### OUTREACH, EDUCATION, AND TRAINING

The Appellate Division devoted a substantial amount of energy and resources to training and outreach. These efforts included the following:

- Massachusetts District Attorneys Association Conference;
- Commonwealth Appellate Attorneys Action Project;
- Lecturer and Clinical Coordinator at Harvard Law School;
- Comments Editor, *Massachusetts Law Review*;
- Associate Editor, *Massachusetts Law Review*;
- Representative at the Massachusetts Citizen Corps Council;
- Tutor at the Paul McLaughlin Center;
- Co-chair of the BBO's September 11<sup>th</sup> Victim Compensation Fund Committee;
- Committee Member: Regaining One's Self-Esteem (violence prevention organization);
- Volunteer Reader at the Marr Boys and Girls Club; and
- Panelist, Clerk's Seminar Series by Administrative Office of the Trial Court.



## CORRUPTION, FRAUD, AND COMPUTER CRIME DIVISION

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The Corruption, Fraud, and Computer Crime Division (CFCC) within the Criminal Bureau protects individuals and businesses residing or working in the Commonwealth by focusing on the following.

- (1) Public Corruption — investigating and prosecuting crimes that compromise the public's confidence in the government or harm public agencies. These cases include crimes committed against state and local public entities and government-funded organizations as well as crimes committed by government employees, agents, and contractors. Cases successfully prosecuted by the division have included charges of bribery, larceny, procurement fraud, tax fraud, perjury, filing false reports, and accepting unlawful gratuities.
- (2) Economic Crime — investigating and prosecuting all types of private-sector economic and white-collar crime, including cases involving fiduciary embezzlement, complex financial fraud, and insider theft.
- (3) Consumer Crime — investigating and prosecuting crimes targeting consumers, with an emphasis on cases involving the Internet, charitable solicitations, unlicensed practice of law and other professions, and home improvement contracting. The division pursues high-impact cases, such as frauds perpetrated against children, the elderly, and immigrants, and cases involving multiple victims in multiple counties.
- (4) Computer Crime — increasingly, criminals, including con artists, cyberstalkers, hackers, child pornographers, and child predators, use computers, the Internet, and other forms of technology to victimize others. In response, the division's specially-trained prosecutors and computer forensics specialists work with the State Police and financial investigators to investigate, arrest, and prosecute cybercriminals, whether they try to attack the computer infrastructure, compromise the safety of our children as they “surf the Net,” or defraud consumers and businesses. In addition, the division provides support and training in computer searches and forensics to law enforcement throughout the Commonwealth. Cases handled by the division have included charges of larceny, copyright infringement, unauthorized access to computers (hacking), possession and dissemination of child pornography, and stalking and harassment.

CFCC included the following staff members: John Grossman, Division Chief; Denise Barton; Carolyn Bradshaw; Lillian Cox; Dana Leccese; Madeline Leone; Laura Marlin; Ingrid Martin; Molly Parks; Tina Skerrit; Dave Swan; and Debra Walsh. A significant number of our cases were also handled by the Criminal Bureau's representative in Western Massachusetts, Assistant Attorney General Matt Shea, and by Senior Trial Counsel Beth Merachnik. CFCC worked as an integrated team with the

members of the Financial Investigations Division, the State Police High Tech Unit, the State Police White Collar and Public Corruption Unit, and the Victim/Witness Assistance Division. On various occasions, we collaborated also with the Criminal Investigation Bureau of the Department of Revenue, the Criminal Investigations Division of the Office of the Inspector General, the State Auditor, and a number of other federal and local law enforcement agencies.

### SIGNIFICANT CASE SUMMARIES

- **Commonwealth v. Richard Anzivino** (Suffolk Superior Court) Anzivino pleaded guilty to stealing over \$800,000 from his employer, the Massachusetts Teachers' Union, and spending much of the cash at Foxwoods and other casinos. The court sentenced him to two years in the House of Correction with one year to serve.
- **Commonwealth v. Paul Cullinane** (Plymouth Superior Court) Cullinane was caught disseminating child pornography over the Internet to someone he believed was a 15-year-old girl, and asking "her" to pose naked. The "girl" was actually an undercover Massachusetts State Trooper. Cullinane pleaded guilty to disseminating child pornography and other charges and was sentenced to two and one half years in the House of Correction with six months to serve.
- **Commonwealth v. Kevin Fernandes** (Fall River District Court) Fernandes was operating a series of cons on the Internet targeting consumers around the country. He was arrested as a result of a joint New Bedford Police and United States Postal Inspector investigation. He pleaded guilty to multiple counts of larceny over \$250, and was sentenced to serve one year in the House and was ordered to pay restitution to his victims.
- **Commonwealth v. James Pahlete** (Cambridge District Court) Pahlete, a career criminal, called a dentist's office, identified himself as a police officer assigned to the Office of the Attorney General, stated he was calling to collect a \$12,000 debt on behalf of Verizon, and threatened to send three police officers to collect the debt. He then hired a courier service to pick up the money from the victim. After State Police followed the courier to Pahlete and executed a search warrant, Pahlete pleaded guilty to extortion, larceny, identity fraud, and other charges and was sentenced to serve two- and one-half years in the House of Correction followed by six months in the House of Correction.
- **Commonwealth v. Stephen J. Milstein** (Norfolk Superior Court) Milstein was hired as legal counsel by multiple clients for the sale of their real estate and stole approximately \$462,000

in escrow money. He was disbarred from the practice of law on January 16, 2001. He pleaded guilty to eight counts of larceny over \$250, and was sentenced to serve two years in the House of Correction, suspended for seven years, and ordered to pay full restitution, and perform community service.

- **Commonwealth v. Timothy Nguyen** (Suffolk Superior Court) Nguyen was a systems administrator at a local investment firm. Knowing his expertise, a friend asked him to repair his laptop. Instead, Nguyen installed a program that allowed him to spy on his “friend” and gain information that he used to break into his victim’s online investment and e-mail accounts and harass the victim. Nguyen pleaded guilty to hacking, criminal harassment, and identity fraud. and was sentenced to three years probation.
- **Counterfeit DVD Cases** (Suffolk Superior Court) Recognizing the persistent problem with the overt sale of counterfeit DVDs and CDs in seemingly legitimate stores in the Downtown Crossing area of Boston and responding to industry concerns, CFCC prosecuted three individuals for selling this contraband. All three admitted their guilt and were sentenced to probation. As a result, thousands of contraband sound and video recordings were taken off the market.
- **Commonwealth v. Arlene Parker** (Berkshire Central District Court) Parker failed to file tax returns four years in a row and filed a false return in a fifth year, hiding over \$420,000 in taxable income from the Commonwealth. She pleaded guilty to all charges and agreed to work with the DOR to calculate and pay taxes, interest, and penalties.
- **Commonwealth v. Helen Newton** (Suffolk Superior Court) This case serves as a model of how CFCC strives to handle public corruption. When the Department of Environmental Protection (DEP) discovered that Newton, an employee, had stolen some \$75,000, they referred the matter to the Office. The division then worked with the DEP and the Office of the State Auditor to investigate the crime, but also to identify and correct the systemic problems that allowed Newton to steal the money. Newton pleaded guilty to larceny over \$250, was sentenced to two years in the House of Correction with eight months to serve, and the balance suspended for five years, and was ordered to pay full restitution.

Additionally, charges were brought during this fiscal year as the result of three significant public corruption investigations:

- **Registry of Motor Vehicles** (Boston Municipal, Waltham District, and Malden District Courts) Thirteen people, including six Registry of Motor Vehicles employees, were arrested in

relation to separate corrupt schemes at three Registry offices. In Watertown, employees and others were selling new identities and licenses; in Malden, employees and a co-conspirator were selling licenses to people who were otherwise ineligible to drive; and in Chinatown, employees and others were restoring licenses that had been revoked for operating under the influence and habitual traffic violations.

- **Everett School Bid Rigging** (Middlesex Superior Court) After an extended investigation by State Police assigned to the Office of the Attorney General and the Office of the Inspector General, the Grand Jury indicted 10 contractors, five companies, and a school district manager in connection with a procurement fraud scheme that took place over a several years. The School Superintendent, the manager, and one of the contractors were also charged in connection with the theft of two air conditioners from the school system.
- **Department of Public Safety** (Suffolk Superior Court) After an extended Grand Jury investigation, the number two official at the Department of Public Safety was indicted for issuing licenses to operate heavy equipment to multiple individuals that had failed to take the requisite test or display the requisite skills. He was also charged with interfering with the investigation by attempting to procure several other individuals to perjure themselves.

## STATISTICAL SUMMARY

During Fiscal Year 2004, CFCC charged 53 individuals and corporations with various crimes, including bribery, larceny over \$250, unauthorized access (computer hacking), illegal wiretapping, identity fraud, making false entries in corporate books, and dissemination of child pornography. Twenty-nine people or companies pleaded guilty or otherwise admitted to sufficient facts in Superior or District Courts across the Commonwealth. Eight of these defendants were ordered to serve time in a county House of Correction. Additionally, these defendants have been ordered to pay in excess of \$550,000 in restitution.

The following chart summarizes the case referrals that CFCC screened for possible investigation and prosecution during Fiscal Year 2004, and the number of those referrals that matured into formal investigations. When a case fell into more than one category, we have tried to place it based on the prospective lead charge.

<b>CASE DESCRIPTION</b>	<b>SCREENED</b>	<b>INVESTIGATED</b>
<b>COMPUTER CRIME</b>		
Auction/Internet Fraud (not from IFCC)	33	3
Child Exploitation	49	16
Computer Intrusions/Hacking	22	6
Threats/Harassment	19	2
Spam	64	1
Miscellaneous	9	7
Forensics Assistance	3	N/A
<b>TOTAL</b>	<b>199</b>	<b>35</b>

<b>CASE DESCRIPTION</b>	<b>SCREENED</b>	<b>INVESTIGATED</b>
<b>FRAUD</b>		
Fiduciary and Insider Embezzlement	47	22
Home Improvement Fraud	11	2
Identity Fraud	24	6
Other Consumer Fraud	73	12
Theft of Trade Secrets or Other Intellectual Property	4	1
Miscellaneous	6	0
<b>TOTAL</b>	<b>165</b>	<b>43</b>

<u>CASE DESCRIPTION</u>	<u>SCREENED</u>	<u>INVESTIGATED</u>
<u>CORRUPTION</u>		
State Employee Corruption	46	24
Municipal Employee Corruption	37	22
Theft from the Commonwealth, Cities, and Towns	5	2
Tax Fraud	19	16
Miscellaneous	12	3
Legal Advice or Assistance	7	N/A
Auditor's Reports and Ethics Notifications Reviewed	56	N/A
<b>TOTAL</b>	<b>182</b>	<b>67</b>
<u>CASE DESCRIPTION</u>	<u>SCREENED</u>	<u>INVESTIGATED</u>
<u>MISCELLANEOUS MATTERS</u>		
	13	1
<b>TOTAL</b>	<b>559</b>	<b>146</b>

### SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

The division historically has been very involved in encouraging and coordinating efforts between the public and private sectors to promote Internet and computer security. This year those efforts took on added significance. For instance, two Assistant Attorneys General spent substantial time working with the Executive Office of Public Safety, the state Information Technology Division (ITD), the City of Boston, MITRE and Dartmouth's Institute for Security Technology Studies planning the state's role in and then observing "Livewire", the first national cyber-security exercise. Additionally, an assistant

attorney general sits on the subcommittee of ITD's Enterprise Security Board that is planning the Commonwealth's participation in the multi-state Information Sharing and Analysis Center (ISAC). This ISAC will allow the Commonwealth to share information regarding cyber- and physical-security with other states and with the federal government, and then will be a mechanism to disseminate appropriate information throughout state government, and to large municipalities as well. The Office of the Attorney General has been hosting the monthly meetings of this group. Additionally, division members continued to play a leadership role with Infragard Boston, the FBI's public/private cyber-security outreach program.

Without a doubt, however, the highlights of the outreach efforts come as a result of participation in the Internet Crimes Against Children (ICAC) Task Force. The Office's dedicated ICAC prosecutor — the first in the country — spends a significant amount of time on outreach and training both inside the Commonwealth and throughout the country as well as prosecuting cases and providing legal advice to the Task Force. Most notably, the ICAC prosecutor has created the Computer Crime Working Group. This group meets quarterly and includes prosecutors, police officers, and computer forensic analysts from Massachusetts. Experienced in computer crime, these individuals discuss techniques and insights in this dynamic area and provide support and training to be shared with colleagues in this specialized field.

In the area of public corruption, the Office continues to work hard to maintain and renew relationships with other agencies working in similar areas and now has regular contact with the Office of the State Auditor, the Inspector General, the State Ethics Commission, the Department of Education, and the Public Employee Retirement Board. Finally, CFCC prosecutors worked closely with staff from the Executive Bureau to research, draft, and/or promote various legislative changes. The changes included amendments to the administrative subpoena and search warrant statutes that would ensure that local law enforcement has the tools to protect its constituencies from computer crime, and a new identity theft bill.

## **OUTREACH, EDUCATION, AND TRAINING**

CFCC devoted a substantial amount of energy and resources to formal training and outreach efforts, particularly in the area of computer crime. This effort allowed the division to (a) teach people and institutions to avoid becoming victims of high-tech crimes and (b) where the Office cannot prevent the crimes from happening, ensure that law enforcement has the capacity to respond.

Among the highlights in this area over the last fiscal year were participation in a number of law enforcement training conferences focused on computer crime that were sponsored by various entities, including the ICAC Task Force, the American Prosecutors Research Institute, and the National Association of Attorneys General (NAAG).

The Office also offered training in other areas, such as teaching at a National White Collar Crime Center program on analyzing financial records and providing training on identity fraud to a community group at the West Roxbury District Court.

In addition, CFCC also participated in various community service programs, including the Eighth Grade Academy and the mock trial program of Citizen Schools. Finally, to ensure that the Office remain current in the dynamic field of computer crime, assistant attorneys general attended a number of free training programs including NAAG and NAC classes, seminars sponsored by the National Center for Missing and Exploited Children, and computer forensics training.

## VICTIM/WITNESS ASSISTANCE DIVISION

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The Victim/Witness Assistance Division (VWA) was developed to meet the following goals: (1) to provide crisis assessment and intervention to crime victims and witnesses to facilitate their emotional, psychological, physical, and financial recovery from victimization; (2) to reduce the level of secondary victimization associated with victims' and witnesses' involvement in the criminal justice system and other collateral systems; and (3) to aid in the prosecution of criminal cases by ensuring that crime victims and witnesses are provided with the rights and services mandated by the Victim Rights Law (G.L. c. 258B). Advocates provide victim advocacy, witness management, and consultation to the following divisions in the Criminal Bureau: (1) Appeals; (2) Criminal Justice Policy; (3) Corruption, Fraud and Computer Crime; (4) Environmental Crimes Strike Force; (5) Financial Investigations; (6) Special Investigations and Narcotics; and (7) the State Police Detective Unit.

In some instances, advocates are assigned to prosecutions in other bureaus of the Office when the prosecutor identifies the need for victim/witness services. The nature of these cases varies depending on the referral source. Advocates also provide victim/witness assistance on conflict cases referred to the Office by the 11 District Attorneys' Offices across the Commonwealth. These referrals typically involve cases of violent crime. The Victim/Witness Assistance Division, in an effort to build community partnerships and to address victim issues identified as mandated priorities of Attorney General Tom Reilly, participates in a number of initiatives relating to children, safety in our schools, elders, fraud, health care, high-tech and computer crime, domestic violence, diversity, criminal justice policy, and curative legislation.

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During Fiscal Year 2004, VWA staff included Kathy Morrissey, Director; and Kelly McDonough, Victim/Witness Advocate.

## SIGNIFICANT CASE SUMMARIES

Four cases of particular note illustrate work in priority areas set by Attorney General Tom Reilly, and they are child protection, elder protection, identity theft, and consumer protection.

### CHILD PROTECTION

- **Commonwealth v. Robert Druken, Jr.** (Corruption, Fraud, and Computer Crime Division)

In 1998, the defendant, Robert Druken, Jr., sent pornographic images depicting children (reasonably believed to be under the age of 18 years old) to an undercover Massachusetts State Trooper assigned to the Office of the Attorney General, and engaged in sexually graphic chat room discussions with the trooper.

During an interview with the Massachusetts State Police, Druken confessed to having sexual contact over a period of several years with a young male. This Office contacted the young male, who revealed that Druken had sexually assaulted him and had also shown him adult and child pornography. On Wednesday, July 23, 2003, Druken, who currently resides in Florida, pleaded guilty before Judge Peter Agnes in Middlesex Superior Court to the following charges:

- (1) Dissemination of Visual Material of a Child in a State of Sexual Conduct;
- (2) Possession with the Intent to Disseminate Visual Material of a Child in a State of Sexual Conduct;
- (3) Possession of Visual Material of a Child Depicted in a State of Sexual Conduct;
- (4) Dissemination of Obscene Matter;
- (5) Dissemination of Matter Harmful to Minors; and
- (6) Attempted Dissemination of Matter Harmful to Minors.

Judge Agnes sentenced the defendant to five years of probation to be supervised by the Florida Department of Correction. Judge Agnes imposed 23 special conditions of probation, and ordered that the defendant comply with all conditions as required by the Interstate Compact agreement. The judge also prohibited Druken from having any contact with the victim. A \$90 Victim Witness Assessment Fee was also imposed.

The advocate was assigned to the Druken case to provide victim advocacy to the aforementioned victim in this case. The advocate provided case updates by both telephone and mail. The advocate acted as a liaison between the victim and the assistant attorney general, ensuring that the victim's voice was heard throughout the pendency of the case by stipulating that: (1) the victim's privacy be protected through a Motion to Redact all identifying information regarding the victim from court documents; and (2) the defendant pay the victim's hospital and counseling bills by way of an order of restitution. In addition, the advocate assisted the victim in completing a Victim Impact Statement, portions of which were read aloud at the time of sentencing.

#### ELDER PROTECTION

- **Commonwealth v. Anthony Jace** (Corruption, Fraud, and Computer Crime Division)  
On September 24, 2003, the defendant, Anthony Jace, pleaded guilty before Judge Goggins in Springfield District Court to a charge of criminal harassment. He was sentenced to seven months committed in the House of Correction after which time he was released on a detainer to the authorities in New Jersey. He did not receive any credit for the time he served awaiting disposition.

The co-defendant, Robert Jace, posed as a Maaco mechanic in a Springfield grocery store parking lot and offered to do auto bodywork on the car of a 91-year-old man. At the victim's home, the Jace spray-painted part of the car and, over the next two weeks, demanded multiple payments for the "work" done to the car. Robert Jace was charged with Extortion and Larceny under §250 from a Person 60 Years Old or Older. On September 24, 2003, this case was continued without a finding, subject to conditions, for six months before Judge Goggins in Springfield District Court. Conditions of the continuance were as follows: (1) the defendant was ordered to pay restitution in the amount of \$700 (\$600 forthwith and \$100 within one month); and (2) he was to have no contact with the victim.

The advocate was assigned to the Jace case to provide information and ongoing support to the 91-year-old victim — crisis counseling regarding the victim's fear of retaliation, consultation regarding the victim's thoughts on sentencing, and linkage and follow-up with probation regarding restitution.

#### IDENTITY THEFT

- **Commonwealth v. Timothy Nguyen** (Corruption, Fraud, and Computer Crime Division)  
On February 5, 2004, the defendant, Timothy Nguyen, pleaded guilty before Judge Brady in Suffolk Superior Court to unauthorized use of his former friend's computer, criminal harassment, and identity fraud. The defendant was sentenced to three years of probation with the following

conditions: 100 hours of community service and no contact, direct or indirect, with the victim. Prior to this incident, the defendant was employed by Brown Brothers and Harriman as a Network Security Engineer. The defendant obtained the victim's investment account numbers and social security number and e-mailed the information to the victim's friends.

The advocate was assigned to the Nguyen case to provide victim advocacy to the identity fraud victim who became increasingly anxious over time about the boundary violation inherent in this crime and its attendant consequences. Victim services included: ongoing notification of case status; screening victim inquiries; consulting with the victim to provide linkage with the Federal Trade Commission and the three credit reporting agencies; and consulting with the victim regarding his Victim Impact Statement.

### CONSUMER PROTECTION

- **Commonwealth v. John Cassidy** (Corruption, Fraud, and Computer Crime Division) On June 3, 2004, before Judge Minehan in Wareham District Court, the defendant, a 75-year-old travel agent, admitted to sufficient facts to warrant a finding of guilty relating to 73 larceny charges. Judge Minehan ordered the matters continued without a finding for three years with probation. Special conditions of probation included: (1) the defendant disclose his criminal record if he works with money; (2) the defendant no longer operate in the travel business; 3) the defendant not act as a fiduciary; and (4) the defendant perform 300 hours of community service. Prior to sentencing, the defendant paid full restitution of more than \$160,000 to the victims in this case — money he obtained from the sale of his house and the surrender of his life insurance policy. Additionally, the defendant was ordered to pay a statutory \$90 Victim Witness Assessment Fee and a \$21 Administrative Probation Fee.

Kathy Morrissey was assigned to the Cassidy case to provide victim advocacy and witness management to 73 victims who were former clients of the defendant. The defendant, allegedly, stole approximately \$160,000 in vacation money — including honeymoons and long-planned anniversary trips. The victims were obviously irate. Multiple victims appeared at each court date. Victim advocacy and witness management included crisis intervention, ongoing notification of case status — in person, by telephone and first-class mail — court accompaniment, guidance with completing Victim Impact Statements, drafting of disposition letter, and oversight of the restitution process.

The sentiments of the victims were captured in a Victim Impact Statement written by a victim couple:

It took us a year to save up for a dream 10-day Caribbean cruise to celebrate our 35<sup>th</sup> wedding anniversary. Because we were unable to come up with another \$2,800, this important milestone in our lives was celebrated at home — not quite what we had dreamed of. This unscrupulous, nasty man has ruined many planned honeymoons, anniversary, and birthday vacations.

### STATISTICAL SUMMARY

During Fiscal Year 2004, the Victim/Witness Assistance Division provided services to a high volume of victims and witnesses. Victim advocacy and witness management services were provided by the victim/witness advocates on 38 cases across the Commonwealth. The case breakdown is as follows:

<u>REFERRAL SOURCE</u>	<u>NUMBER OF CASES</u>
Appeals Division	7
Corruption, Fraud, and Computer Crime Division	24
Special Investigations and Narcotics Division	5
Conflict Cases	1
Other — United States Attorney's Office	1
<b>TOTAL</b>	<b>38</b>

### SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

The division provided daily in-house consultation to prosecutors, investigators, and state troopers by screening and responding to duty calls and correspondence from the public when victim/witness issues were identified.

## OUTREACH, EDUCATION, AND TRAINING

During Fiscal Year 2004, the division's advocates maintained numerous outreach efforts in community activities and both taught and attended training classes inside and outside of the Office of the Attorney General, including:

- Attending bi-monthly meetings of the Victim and Witness Assistance Board, chaired by Attorney General Tom Reilly;
- Attending regular meetings for statewide Victim/Witness Directors, sponsored by the Massachusetts District Attorneys Association;
- Serving as the Attorney General Liaison at bi-monthly meetings of the Boston Area Sexual Assault Coalition at Massachusetts General Hospital and at Beth Israel Deaconess Medical Center;
- Continuing to provide telephone consultation to clergy abuse survivors;
- The division director served on the Planning Committee for "A Celebration of 20 Years of Victim Rights in Massachusetts," and attended the event at the State House in Boston.
- The division director served on the Planning Committee and attended the Annual Victim Rights Conference in April 2004, sponsored by the Massachusetts Office for Victim Assistance, the Victim and Witness Assistance Board, Attorney General Tom Reilly, and the Massachusetts District Attorneys Association.
- Attending the Second Annual Victim/Witness Advocate Conference, Hancock, MA;
- Attending 24 educational training seminars across the Commonwealth relating to victim/witness issues;
- Consulting with the Victim Services Coordinator and Policy Analyst at the Massachusetts Office for Victim Assistance (MOVA) regarding the state-of-the-state of victim services for fraud victims; and
- Conducting training related to the implementation of the Victim Rights Law and the role of the Victim/Witness Assistance Division to the Criminal Bureau summer interns.

## SPECIAL INVESTIGATIONS AND NARCOTICS DIVISION

The Special Investigations and Narcotics (SI&N) Division coordinates and prosecutes a variety of complex, multi-jurisdictional criminal cases. The division also proactively investigates traditional criminal

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enterprises — including so-called organized crime families and large-scale drug trafficking organizations — as well as non-traditional criminal organizations such as street gangs and armed robbery rings. A priority of the division is to identify and prosecute individuals and groups involved in the illegal sale or possession of firearms. SI&N prosecutors are also responsible for providing assistance in the drafting of legislation pertaining to electronic surveillance, racketeering and corruption, narcotics, firearms, and child protection. Division members are encouraged to participate in the conception and implementation of community education and outreach programs.

The SI&N Division, through its Asset Forfeiture Unit, initiates and pursues civil and criminal forfeiture and nuisance actions of property related to the sale, distribution, and facilitation of drug-related offenses as well as gaming violations. Funds recovered by the Unit are distributed in accordance with the forfeiture laws.

Among the general categories of crimes the SI&N Division investigated and/or prosecuted during Fiscal Year 2004 were the following: armed robbery; narcotics trafficking and related offenses; armed career criminal violations; armed assault with intent to murder; assault and battery with a dangerous weapon; breaking and entering with intent to commit a felony; perjury; larceny of a motor vehicle; larceny of construction equipment; gaming; extortion and loan sharking; and habitual criminal offenders. This division also investigated possible acts of violence related to the Democratic National Convention, although no such activity or cases were realized.

Attorneys, state police officers, and investigators assigned to the SI&N division also continued to work with and provide technical, legal, and other forms of investigative support and assistance to federal, state, and local law enforcement agencies. These agencies included the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco and Firearms, the Federal Bureau of Investigations, the Suffolk County Sheriff's Department, the Department of Corrections, District Attorneys Offices, and various state and local police departments and task forces throughout the Commonwealth and, in some circumstances, across the country. These joint undertakings included investigations of large-scale drug distribution and money laundering organizations, organized larceny rings, and armed career criminals.

Members of the division for all or part of Fiscal Year 2004 included Assistant Attorney General William F. Bloomer, Division Chief until April 2004; Assistant Attorney General Eileen M. O'Brien, Division Chief after April 2004; Jennifer Doherty; Tracie Fernandes; Robert Fisher; Joanna Kennefick; Patrick Lee; Peter Paulousky; Mary P. Phillips; and Matthew Shea. Approximately 16 Massachusetts State Troopers are assigned to the SI&N Division within the Office of the Attorney General. During Fiscal Year 2004, Captain Stephen Matthews oversaw the command of all State Police Detectives assigned

to the Office, including SI&N troopers. Lieutenant Francis Matthews, with Lieutenant Richard Prior, formed the central core of the remaining command structure for SI&N troopers.

### SIGNIFICANT CASE SUMMARIES

- Commonwealth v. Anthony Rizzo (Suffolk and Middlesex Superior Courts); Commonwealth v. Anthony Cardillo (Suffolk and Middlesex Superior Courts); Commonwealth v. Paulo Tizzano (Suffolk Superior Court); Commonwealth v. Pasquale Regnetta (Suffolk Superior Court); Commonwealth v. Richard Moretto (Suffolk and Middlesex Superior Courts); Commonwealth v. William Meehan (Suffolk Superior Court); Commonwealth v. Andrew Arinello (Suffolk and Middlesex Superior Courts); Commonwealth v. Dean Rosati (Suffolk and Middlesex Superior Courts); Commonwealth v. Louis Carpinto (Suffolk Superior Court and Peabody District Court); Commonwealth v. Wilberto Pagan (Middlesex Superior Court); Commonwealth v. Norge Olivero (Middlesex Superior Court); Commonwealth v. Frank Coscarelli (Middlesex Superior Court) On December 19, 2002, over 130 local, state and federal police officers executed 17 search warrants at locations in the North End and throughout Greater Boston, following the SI&N Division's investigation into the criminal activities of "La Cosa Nostra." Police seized 13 guns, explosive devices, hundreds of Percocets, trafficking quantities of cocaine and marijuana, and approximately \$132,000 in drug money. The 15-month investigation, dubbed "Operation Neighbor-Hoods," involved the electronic surveillance of seven telephones and the placement of a bugging device and GPS Tracking System in a target's vehicle. Eighteen individuals were arrested or charged, including the primary target, Anthony Rizzo, an alleged "made" mafia soldier. As a result of the concerted efforts of the state police and Assistant Attorney General Patrick Lee, five of the defendants have already pleaded guilty to a variety of offenses, including conspiracy to traffick in a controlled substance and possession of a firearm, in state courts.
- Commonwealth v. Paul Allen (Middlesex and Suffolk Superior Courts); Commonwealth v. William Wadman (Suffolk Superior Court); Commonwealth v. Brendan Houlihan (Suffolk Superior Court); Commonwealth v. Gerald Poliskey (Suffolk Superior Court); Commonwealth v. Nelson Perez (Suffolk Superior Court) In 2001, police and prosecutors were confronted with a rash of pharmacy robberies targeting the theft of OxyContin pills — a highly addictive, opiate painkiller. Facing a public safety and public health emergency due to the escalating number of pharmacy robberies, Attorney General Reilly formed the "OxyContin Task Force" in August of 2001. The Task Force consisted of members of the State Police, the Boston Police, local police departments, federal law enforcement agencies, and prosecutors assigned to the



SI&N Division and District Attorneys' Offices throughout Eastern Massachusetts. By the end of Fiscal Year 2003, Task Force members had arrested and charged 12 individuals in connection with six armed robberies of pharmacies occurring in Suffolk, Middlesex, and Essex Counties, and an additional four people, including a Suffolk County Deputy Sheriff, for drug-related offenses. Firearms, including a "Tec 9" large-capacity weapon and handguns with obliterated serial numbers, knives, a bullet-proof vest, masks, gloves, thousands of dollars, and hundreds of OxyContin pills and other narcotics were seized by Task Force members. During Fiscal Year 2003, as a result of the efforts of Assistant Attorneys General Eileen O'Brien and William Bloomer, 11 of the 16 individuals pleaded guilty in a number of courts to charges ranging from armed robbery while masked to trafficking in oxycodone to armed career criminal violations. Three of the leaders of the organized armed robbery rings, Sean Noonan, Paul Allen, and Philip O'Neil, received sentences of more than 10 years in state prison for their offenses. The Task Force investigation relating to Paul Allen took another turn in January 2003 when State Police assigned to the Attorney General's Office arrested Nelson Perez, a Nashua Street Jail guard, as he was bringing cocaine, oxycodone, and marijuana into the jail. Follow-up investigation resulted in charges against Paul Allen, William Wadman, Gerald Poliskey, and ultimately Brendan Houlihan. All of these defendants had long prior criminal records and were indicted on narcotics trafficking charges. By the end of Fiscal Year 2004, Allen had pleaded guilty to another 15-year sentence. The other defendants, including Perez, are scheduled for trial in Fiscal Year 2005.

- **Commonwealth v. Timothy White; Commonwealth v. Robert Crisafulli** (Norfolk Superior Court) On January 27, 2003, Sergeant Timothy White of the Massachusetts State Police was arrested at his home at 65 Southworth Court, Stoughton, MA, after he allegedly assaulted his wife, Maura White, with his service weapon — a .40-caliber Sig Saur handgun. At the time of his arrest, Sgt. White was assigned to the Narcotics Inspection Unit (NIU) of the State Police. Subsequent investigation revealed approximately 13 kilograms of cocaine and other narcotics as missing from the NIU storage facility in Framingham. After interviews of witnesses and search warrant executions, Sergeant White was indicted for, among other things, the theft and distribution of nearly all of the missing cocaine as well as varying amounts of marijuana and ecstasy taken from the bunker. An acquaintance of the Whites', Robert Crisafulli, allegedly sold multiple-ounce quantities of cocaine for White from October through December of 2002. On February 28, 2003, troopers searched a storage bin in Hyde Park rented by Crisafulli and discovered approximately 700 grams of cocaine. These cases came to the Attorney General's Office, specifically to the SI&N Division, upon requests from the Massachusetts State Police and the Norfolk County District Attorney's Office.



- **Commonwealth v. Jason King** (Middlesex Superior Court); **Commonwealth v. Antonio Centeno** (Middlesex Superior Court) During a six-month investigation, prosecutors and troopers from this division assisted the Drug Enforcement Administration and Lowell Police Department in conducting a wiretap investigation of an organization that was responsible for importing sizable quantities of cocaine and heroin into the Lawrence and Lowell areas from New York City. Six cellular telephones and two residential telephones were monitored pursuant to court orders during this investigation. At the conclusion of the investigation, 18 search warrants were executed at locations in Middlesex and Essex Counties. Police and federal agents seized approximately one kilogram of cocaine, heroin, ecstasy pills, steroids, and tens of thousands of dollars. The primary targets of the investigation, Luis Cotto and Jason King, and five others were arrested. Four additional individuals were indicted following a grand jury investigation. To date, as a result of the efforts of Assistant Attorney General Alope Chakravarty, all but one of the defendants have pleaded guilty to a variety of offenses ranging from trafficking in cocaine to conspiracy to distribution of controlled substances. This investigation exemplified the successful cooperative efforts of three separate law enforcement entities working together with one prosecution entity to attain one goal. King is a cooperating, testifying witness. As a result of that cooperation, Centeno decided to cooperate in the federal investigation of the murder of Aislyn Silva. He will be testifying in the federal trial in exchange for a concurrent five-year sentence on his remaining charges.

- **Commonwealth v. James Hayes** (Middlesex Superior Court); **Commonwealth v. Anthony Cardillo** (Middlesex Superior Court); **Commonwealth v. Scott Sanders** (Middlesex Superior Court); **Commonwealth v. Patrick McGonagle** (Middlesex Superior Court); **Commonwealth v. Christian Petrillo** (Middlesex Superior Court); **Commonwealth v. Cynthia Hughes** (Middlesex Superior Court); **Commonwealth v. William Mosher** (Middlesex Superior Court); **Commonwealth v. Alfonso Velasquez-Londono** (Middlesex Superior Court); **Commonwealth v. Christian Kelley** (Suffolk Superior Court); **Commonwealth v. David Kelley**; (Middlesex Superior Court); **Commonwealth v. Joseph Rosato** (Middlesex Superior Court) During 2000, troopers assigned to the SI&N Division of the Office of the Attorney General conducted an investigation into three separate but overlapping Percocet, cocaine, and ecstasy distribution rings operating in the Greater Boston area. From July 10, 2000, through August 15, 2000, through the use of wiretap warrants, officers intercepted communications over eight different telephones and two paging devices relating to the importation and resale of large quantities of Percocet pills, kilogram quantities of cocaine as well as ecstasy pills. On March 12, 2004, Scott Sanders pleaded guilty and was sentenced to 10- and one-half years for trafficking over 200 grams of cocaine, conspiracy to traffick cocaine, and conspiracy to traffick oxycodone. On

March 29, 2004, James Hayes pleaded guilty to trafficking over 200 grams of cocaine. He was sentenced to 10 years. Anthony Cardillo was sentenced to 10 years from and after Suffolk Superior docket # 2003-10201 for trafficking both cocaine and oxycodone. Patrick McGonagle was sentenced on June 1, 2004, to two- and one-half years for conspiracy to traffick cocaine. Cynthia Hughes was sentenced to two years on June 4, 2004, for Possession of Cocaine with Intent to Distribute. On June 16, 2004, Christian Kelley was sentenced to 10 and one-half years for trafficking oxycodone. Of the approximately 20 defendants, there are three remaining from this wiretap. One of these defendants, David Kelley, defaulted at his trial date on June 21, 2004, and his \$75,000 bail was forfeited. A warrant was issued and OIA has also issued a provisional arrest warrant for Costa Rica where the defendant is believed to have fled.

- Commonwealth v. Mario Reyes (Middlesex and Suffolk Superior Courts); Commonwealth v. Monica Reyes (Middlesex and Suffolk Superior Courts); Commonwealth v. James Abreus (Suffolk Superior Court); Commonwealth v. Faber Aldana (Middlesex Superior Court); Commonwealth v. Gilberto Cruz (Middlesex Superior Court); Commonwealth v. Jose Rivera (Suffolk Superior Court); Commonwealth v. William Torres (Middlesex and Suffolk Superior Courts); Commonwealth v. Carlos Parra (Suffolk Superior Court) Operation Colombian Gold Wiretap Investigation with DEA and MSP. DEA Task Force investigation of international drug distribution organization revealed that the principals of the organization regularly obtained and distributed kilograms of cocaine and heroin as well as thousands of MDMA (ecstasy) pills, and also imported the drugs into the United States. From September 2001 to November 2001, agents and officers monitored five telephones pursuant to court-ordered electronic surveillance warrants. The initial target, Monica Reyes, sold over 100 grams of heroin to an undercover trooper on several occasions, and approximately 1 kilogram of heroin was interdicted from Costa Rica based on the information from the wiretap. Additionally, the New York office of DEA initiated a wiretap investigation based on the intelligence from this case, which led to the seizure of approximately one- and one-half additional kilograms of heroin and a handful of arrests. A shipment of 18 kilograms of cocaine, part of which was destined for Monica Reyes, was also seized. On November 2, 2001, after another principal target, Mario Reyes Jr. was intercepted bringing approximately 700 grams of cocaine to the Boston area from New York, nine search warrants were executed and approximately 500 grams of additional cocaine were seized. Currently, eight defendants stand charged in Middlesex and Suffolk.

- Commonwealth v. James A. Nolan (Suffolk Superior Court) In February 2004, the defendant, James Nolan, was arrested after he shot a Boston Police Special Operations officer through the front door of his apartment with a .45-caliber handgun while that officer was attempting to execute a search warrant along with other Mobile Operations (MOP) team

members. The bullet struck the officer in his side and lodged itself into his tactical vest. A Superior Court judge had previously issued the warrant — which authorized a search of the residence for marijuana, firearms, and ammunition — to troopers assigned to the Attorney General’s Office. A search of the defendant’s apartment uncovered one loaded H & K .45-caliber handgun, a spent .45-caliber shell casing, several rounds of loose ammunition, a bullet-proof vest, a couple of ounces of marijuana packaged for distribution, a digital scale, approximately \$1,565 in U.S. currency, and personal papers in the defendant’s name as well as his belongings. On April 1, 2004, a Suffolk County Grand Jury returned indictments charging Nolan with Armed Assault with Intent to Murder in violation of c. 265, § 18(b), Assault and Battery with a Dangerous Weapon in violation of c. 265, § 15A(b), Assault and Battery of a Police Officer in violation of c. 265, § 13D, Possession of a Firearm in violation of c. 269, § 10(h), Possession of Ammunition in violation of c. 269, § 10(h), Possession of Marijuana with Intent to Distribute in violation of c. 94C, § 32C(a), and Violation of a Drug Offense within a School Zone in violation of c. 94C, § 32J.

- Commonwealth v. Clyde Bogle (Hampden Superior Court); Commonwealth v. Juana Edmonds (Hampden Superior Court); Commonwealth v. Myra Marable (Hampden Superior Court); Commonwealth v. James Voorhies (Hampden Superior Court); Commonwealth v. Brenda Featherstone-Holloman (Hampden Superior Court); Commonwealth v. Cynthia Green (Springfield District Court); Commonwealth v. Myoshi Dickson (Springfield District Court); Commonwealth v. Yuri Rankin (Hampden Superior Court) During this fiscal year, SI&N initiated an investigation targeting a violent crack-cocaine trafficking organization headed by an individual named Clyde Bogle. Bogle had successfully avoided prosecution for years in the Springfield area when witnesses repeatedly recanted their prior statements at trial. Bogle and his crack-cocaine business were shut down after an intense two-week wiretap investigation led to the issuance of search warrants, resulting in the seizure of trafficking quantities of crack and thousands of dollars in proceeds. As a result of this investigation, 11 individuals have been charged with narcotics offenses.

- Commonwealth v. Jason Bodiford (Springfield District Court); Commonwealth v. Pernell Bodiford (Springfield District Court); Commonwealth v. Joao Alves (Springfield District Court); Commonwealth v. Otis Gaynor (Springfield District Court); Commonwealth v. Brian Searles (Springfield District Court) On June 8, 2004, an undercover trooper assigned to the Attorney General’s Western Massachusetts Office met with a target, Joao Alves, a/k/a “Fat Johnny”, to purchase a large quantity of OxyContin pills in the Springfield area. The trooper had already made undercover purchases from the target. On this night, however, Alves set up the undercover

trooper, and after directing him toward an isolated area, he left while three other men approached and robbed the trooper of the money at gunpoint. Two of the three men brandished guns, while the third stood ready to help. All three then fled through a path in the nearby woods. Another state trooper, listening to the report of the robbery from her undercover surveillance cruiser, found the getaway vehicle and, after a pursuit to another section of the city, successfully held them until backup arrived. Ultimately, the money was recovered, along with two handguns. Alves and three others are charged with armed robbery.

## **STATISTICAL SUMMARY**

At any given time, the division generally has in excess of 100 cases pending in various courts throughout the Commonwealth, over 15 ongoing investigations, and a handful of post-trial motions that require written responses and court appearances. The statistical breakdown of the number of arrests, criminal cases initiated, and cases disposed during Fiscal Year 2004 is set forth below.

### **GENERAL CASE INFORMATION**

Felony Arrests	35
Criminal Cases Initiated	29
Cases Disposed	93

From July 1, 2003, through June 30, 2004, State Police assigned to the SI&N Division made approximately 35 felony arrests. Prosecutors in the division in turn successfully disposed of 93 pending cases in the Massachusetts Superior and District Courts, while initiating approximately 29 new cases in those same courts. Four of those convictions were attained by means of guilty verdicts following jury trials in Superior Courts in Worcester, Essex, and Norfolk Counties. One of those trials also entailed the presentation of intercepted communications from a 2000 wiretap. Of the number of drug cases investigated by the division in Fiscal Year 2004, approximately five percent of these involved two controlled substances rapidly growing in popularity among young adults: oxycodone, a highly addictive painkiller (the active ingredient in pharmaceutical OxyContin), and Methylenedioxy-N-Methylamphetamine (MDMA), otherwise known as the designer drug “ecstasy.” The remaining percentage of narcotics cases included the more common street drugs such as heroin, cocaine, and marijuana. Virtually all of these cases involved trafficking quantities of these drugs.

**FIREARMS**

Guns Seized or Purchased	18
Individuals Charged with Firearms Offenses	5

From July 1, 2003, through June 30, 2004, state police assigned to the SI&N Division seized at least 18 guns ranging from an AR 7 to several weapons with obliterated serial numbers and a .9-mm semi-automatic. Based upon these seizures, prosecutors in the SI&N Division charged five individuals with a variety of firearms offenses, including armed career criminal violations and armed robbery. One investigation resulted in the seizure of a large stash of guns in Boston. While the ATF traces are still pending, it was determined that at least one of those firearms was stolen from out of state.

**ASSET FORFEITURE**

Civil Forfeiture Cases Initiated	5
Civil Forfeiture Cases Disposed	25

During Fiscal Year 2004, the Asset Forfeiture Unit initiated five new civil forfeiture actions (not including forfeitures pursued by means of criminal motions), and concluded 25 actions involving money, cars, and jewelry. By way of example, the unit commenced civil actions against cars that were used to facilitate the distribution of narcotics or were purchased with the proceeds of the distribution of narcotics, including one 2000 Mercedes, one Ducati Motorcycle, one 2000 Jaguar XJ, and one 1993 Audi. In June 2003, the forfeiture assistant attorney general organized and facilitated an automobile auction in Middleboro in conjunction with the Plymouth District Attorney's Office. The Office of the Attorney General auctioned seven luxury vehicles and one motorcycle, all of which had been seized and forfeited from drug dealers and grossed \$111,675.

**WIRETAPS**

Wiretap Warrants Applied for	2
Wiretap Warrants Received	2
Devices Tapped	2

One-Party Consent Warrants Applied for 15+

One-Party Consent Warrants Received 15+

Electronic surveillance was a significant tool that the division utilized to penetrate and dismantle complex illegal enterprises during Fiscal Year 2004. Over the past year, troopers assigned to this division have on numerous occasions equipped themselves and informants with electronic body wires, pursuant to so-called *Blood* warrants, to intercept and record criminal conversations with unsuspecting targets. Additionally, from July 2003 through June 2004, the SI&N Division executed two court-authorized wiretap warrants (excluding one-party consent/*Blood* warrants). These warrants authorized law enforcement officers to intercept, monitor, and record criminal communications occurring over one cellular and one residential telephone. These electronic surveillance measures, coupled with traditional investigative techniques, have proven invaluable in securing the convictions of individuals with ties to a variety of sophisticated criminal enterprises. Because of their considerable expertise in this area, attorneys in the division are frequently asked to assist police officers and fellow prosecutors in the law of search and seizure and electronic surveillance.

### POST-TRIAL MOTIONS

Post-Trial Motions Filed by Defendants 4

Post-Trial Motions Disposed 4

In addition to prosecuting their pending criminal cases, Assistant Attorneys General in the SI&N Division responded to four post-trial motions. These motions, filed by convicted felons, sought new trials, jail credit, or sentence reductions. Of the number of post-trial motions filed, three were denied, and one motion to strike speedy trial was allowed because it was the wrong defendant.

### SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

Assistant attorneys general assigned to SI&N Division continued to provide service and assistance both in and out of the Office that exceed the scope of traditional prosecutorial responsibilities. Some of these extracurricular contributions include service on the Youth Violence Task Force; “The Law and You” presentation to eighth-grade students at the Curtis Middle School; the Citizens School Community Outreach Program, which allows students an opportunity to participate in a mock trial as prosecutors and criminal defense attorneys; Northeastern University’s Moot Court Competition; the Springfield

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Task Force addressing inner-city drug and gun problems; the South Asian Bar Association; the Governor's Racial Profiling Task Force; MCLE; the Attorney General's Loan Forgiveness and Assistance Program for Public Employees; and the Massachusetts Law Review. In addition, Assistant Attorney General Eileen O'Brien drafted a new wiretap legislative proposal and Assistant Attorney General William Bloomer submitted testimony in support of that bill to a legislative committee.

During Fiscal Year 2004, attorneys in the SI&N Division were also required to act as point persons for the office on a variety of topics that require specialized knowledge in certain areas of law. For instance, prosecutors in the division provided advice and assistance to attorneys and police officers across the state in rendition matters. In addition, an assistant attorney general fields all public record inquiries directed to the division. Prosecutors also served as the division's intern coordinators, who in that capacity supervise and monitor the progress of law student interns assigned to the division.

## **OUTREACH, EDUCATION, AND TRAINING**

Members of the division attended trainings both inside and outside the Office during Fiscal Year 2004, in an effort to keep abreast of important current issues and trends in the law. These trainings encompassed a variety of topics, including ethics, anti-discrimination, computer forensics, international investigative issues, and trial advocacy techniques. Some of the trainings attended by Assistant Attorneys General in the division included MCLE's program on Attacking and Defending Search Warrants; NAAG's Trial Advocacy Training; the NDAA's Computer Forensics and Cyberstalking Investigations Training; the NDAA's Cross Examination Course; the MDAA's DNA Training; and the NDAA's Prosecuting Drug Cases Training.

Assistant Attorneys General in the division also served as faculty for (1) the National Association of Attorneys General, *Trial Practice Academy*; (2) the National Advocacy Center for the National District Attorneys Association; and (3) Massachusetts Continuing Legal Education.

## **ENVIRONMENTAL CRIMES STRIKE FORCE**

The Massachusetts Environmental Crimes Strike Force (ECSF) is a unique interagency enforcement tool used in the investigation and prosecution of the Commonwealth's environmental enforcement efforts. Through the cooperation of the Attorney General, the Secretary of Environmental Affairs, the Department of Environmental Protection (DEP), and the Massachusetts Environmental Police, the ECSF brings specialized prosecutorial, technical, and police resources under a single umbrella. The

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ECSF thus provides the legal, scientific, and investigative expertise necessary to identify environmental violations, evaluate their impact on public safety and the environment, and develop the evidence necessary to prosecute environmental crimes. Among the general categories of environmental crimes the ECSF Division investigated and/or prosecuted during Fiscal Year 2004 were the following: illegal treatment and disposal of hazardous waste; discharging pollutants to the waters of the Commonwealth; illegal dumping; open burning of hazardous wastes; illegal removal of asbestos; and filling or altering of wetlands. In addition, the ECSF Division investigated or prosecuted traditional white-collar crimes, for example: larceny by false pretense; procurement fraud; and identity fraud. In addition, division attorneys often work with local police and fire departments, federal law enforcement officials, Attorney Generals' Offices from neighboring states, District Attorneys' Offices from across the state, and investigators assigned to other state agencies.

Members of the division for all or part of Fiscal Year 2004 included Paul J. Molloy, Division Chief; Jennifer Doherty, Stacey Glynn, and Kevin Plante. The three Massachusetts Environmental Police Officers assigned to the ECSF were Lt. Gail Larson and Environmental Police Officers Michael Moore and Pat Haley.

### SIGNIFICANT CASE SUMMARIES

Highlights of cases handled by the Environmental Crimes Strike Force in Fiscal Year 2004 include:

- **Commonwealth v. Karl D. Clemmey/Quirk Trust LLC** (Bristol Superior Court) The defendants were indicted in December 2003 by the Bristol County Grand Jury on 10 counts each of violating the Wetlands Protection Act for clear cutting and filling over six acres of wetlands, making it the largest Wetlands Protection violation in state history. The defendants were arraigned on January 22, 2004. On May 17, 2004, Judge Connon granted the Defendant's Motion to Dismiss. The Commonwealth appealed this decision, and the case is scheduled for oral argument before the Supreme Judicial Court in May 2005.
- **Commonwealth v. Brian Dodge** (Springfield Housing Court) This case was brought upon a request by the Department of Public Health to take over the prosecution of a lead paint case already filed in Housing Court. On April 26, 2004, the defendant pleaded no contest to (1) unauthorized lead paint abatement; (2) Contempt of Court Order; and (3) illegal disposal of hazardous waste (lead). The defendant was fined \$3,000, and placed on probation for one year. A condition of probation was that all lead paint be legally abated by a licensed contractor.



- **Commonwealth v. BATG Environmental, Inc./Richard Denham** (Suffolk Superior Court)

The defendants, a Big Dig Contractor and its vice president, Richard Denham, were indicted in April 2003 by the Suffolk County Special Grand Jury on four counts of Identity Fraud and four counts of Procurement Fraud. On April 1, 2004, BATG Environmental pleaded guilty to four counts of Identity Fraud and received the maximum fine of \$20,000. The corporation was placed on pre-trial probation on the procurement fraud charges. One condition of probation stated that BATG must enter into an Administrative Consent Order with DEP to assure future compliance, and pay \$40,000 to an environmental fund. A trial of the charges against Richard Denham is scheduled in Fiscal Year 2005.

### **STATISTICAL SUMMARY**

Investigations Opened	26
Investigations Closed	24
Defendants Indicted in Superior Court	2
Defendants Disposed in District Court	1
Defendants Disposed in Superior Court	1

During Fiscal Year 2004, the Environmental Crimes Strike Force opened 26 investigations and closed 24 (some of which were opened in Fiscal Year 2003). There were one corporation and one individual indicted in Superior Court. Two cases resulted in guilty pleas, one in Superior Court and one in the Housing Court. In addition, the Environmental Police executed two search warrants.

### **SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES**

In addition to the cases that we investigated and prosecuted, division staff undertook significant initiatives. ECSF attorneys worked closely with the Executive Bureau to draft the Environmental Endangerment Act, and testified before the legislature in support thereof. The Act became law in July 2003.

In response to the Bouchard 120 oil spill on April 27, 2003, in Buzzards Bay, the Fiscal Year 2004 budget formed a special commission to study the ecological and environmental impacts of said spill. On February 9, 2004, Attorney General Tom Reilly appointed Assistant Attorney General Paul J. Molloy his designee to the commission. The commission conducted public hearings in New Bedford on March 2, in Bourne on March 4, and in Gloucester on March 15, 2004. Assistant Attorney General Molloy also met with representatives of the United States Coast Guard, the Department of Environmental Protection, and the Executive Office of Environmental Affairs. The goal of the commission was to draft comprehensive legislation to prevent future oil spills. *"An Act Relative to Oil Spill and Prevention and Response in Buzzards Bay and Other Harbors and Bays of the Commonwealth"* was signed into law by the Governor on August 4, 2004. The Act amends the Environmental Endangerment Act, which was submitted by the Attorney General last year and passed by the legislature. The amendment provides criminal penalties for negligent violations of environmental laws that result in serious personal injury or substantial damage to the environment. It further provides that the fine in these circumstances can be up to twice the pecuniary gain to the defendant or twice the amount of the loss or damage.

### OUTREACH, EDUCATION, AND TRAINING

During Fiscal Year 2004, ECSF staff were involved in various activities as well as attended and taught training classes inside and outside the Office of the Attorney General, including:

- On October 21, 2003, the division chief was the featured speaker at the Boston Bar Association's (BBA) Environmental Luncheon on the criminal enforcement of environmental laws.
- On June 7, 2004, the division chief gave a presentation to the Northeast Environmental Enforcement Project in Princeton, New Jersey, on the Massachusetts Environmental Endangerment Bill.
- On May 6, 2004, the division chief was a featured speaker at the BBA Luncheon regarding the Buzzards Bay Oil Spill.
- In April 2004, the division chief was a member of the faculty at the NAAG Trial Advocacy Telemarketing Fraud Training.
- Throughout Fiscal Year 2004 Strike Force prosecutors and police officers conducted training for DEP regional offices on identifying potential environmental crimes.

## INSURANCE AND UNEMPLOYMENT FRAUD DIVISION

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The mission of the Insurance and Unemployment Fraud Division (IUFD) has been to investigate and prosecute fraud against all types of insurers in Massachusetts and against the Commonwealth's unemployment security system. IUFD prosecuted these crimes to protect Massachusetts businesses, consumers, and taxpayers from the higher premiums and taxes that are the ultimate result of the fraud.

IUFD's cases varied widely, including fraud in auto repair businesses, staged motor vehicle accidents, multi-million-dollar workers' compensation premium fraud cases, conspiracies by medical and legal professionals, inflated claims against homeowner's policies, cases involving claimants working while collecting workers' compensation benefits, and fraud by businesses on the Commonwealth's unemployment security fund. IUFD gave special attention to policing fraud by insurance industry insiders, including insurance agents, claims adjusters, and damage appraisers, whose frauds could have had an especially corrosive effect on public confidence in the insurance and unemployment compensation systems.

IUFD received referrals from a number of sources. One source was the Massachusetts Insurance Fraud Bureau, a non-governmental entity created by the Massachusetts Legislature and funded pursuant to statute indirectly by the Massachusetts insurance industry. In addition, IUFD received referrals from the Commonwealth's Human Resources Division, the Governor's Auto Theft Strike Force, the Department of Industrial Accidents, the Workers' Compensation Rating and Inspection Bureau, the National Insurance Crime Bureau, and the Social Security Administration. IUFD also received complaints and referrals from concerned citizens, private attorneys, and court personnel. The wide-range of referrals helped demonstrate IUFD's efforts in fighting insurance fraud throughout the Commonwealth.

IUFD also is a part of the Cooperative Disability Investigations (CDI) Unit. CDI is funded by the Social Security Administration (SSA), and comprises the SSA's Office of Investigations/Office of the Inspector General, the Massachusetts Disability Determination Services, and IUFD. IUFD provides CDI with two investigators who conduct surveillance and provide the evidence used to prosecute Social Security disability-related fraud. Because a portion of Social Security disability benefits is paid via state funds, this crime robs the Commonwealth's taxpayers twice: once as federal taxpayers and again as state taxpayers. In Fiscal Year 2004, the CDI Unit completed investigations in a total of 104 cases. SSA savings for this time period was \$3,478,883 and non-SSA savings for this time period was \$2,182,689. Thus, IUFD contributed to helping recover a total of \$5,690,212 in taxpayers' monies.

During Fiscal Year 2004, IUFD staff included Eliot Green, Division Chief; Glenn Cunha and Tim Malec, Deputy Division Chiefs; Jennifer Adams; David Andrews; Kenneth Belson; Robert Benson; Julie Brady; Tracy Turner-Brown; Kajal Chattopadhyay; John Compton; Colleen Connor; John Crimmins; John Curseaden; Brian Delaney; Daniel Kornetsky; Gloria Luk; Lea May; Ian McKenny; Michael McNally; Shauna Neuhauser; Ray Rowland; Vicky Scolnick; John Talbot; and Cindy Walsh.

## SIGNIFICANT CASE SUMMARIES

### FRAUD BY PROFESSIONALS

- **Commonwealth v. Robert Therrien** (Barnstable Superior Court) A Cape Cod-based architect committed arson to his office. A two-week jury trial resulted in a guilty verdict. Sentencing is scheduled for a date in Fiscal Year 2005.
- **Commonwealth v. Harry Markarian** (Worcester Superior Court) This case was one of the final cases associated with the series of Ellis & Ellis cases, involving a Worcester law firm involved in perpetrating provider fraud. Markarian pleaded guilty on tax fraud charges and was sentenced to two years probation.

### FRAUD BY INSIDERS

- **Commonwealth v. Marco Anthony Watkins** (Suffolk Superior Court) Watkins, a licensed insurance agent, sold policies and then fraudulently applied for additional policies under the insureds' names, pocketing premiums and commissions. Over 40 victims were defrauded, involving 11 insurance companies, with the fraud totaling \$110,000. Watkins pleaded guilty and was sentenced to two years in the House of Correction, 90 days to serve, with the balance suspended for three years of probation, and full restitution order.
- **Commonwealth v. Kevin Hunt** (Worcester Superior Court) Hunt, an owner of a small insurance company, was involved in a fraudulent loan scheme as well as failing to remit client payments. In the first scheme, Hunt prepared finance agreements for five bogus companies for workers' compensation insurance. The loans totaled over \$177,000. In a separate incident, several auto insurance policies lapsed. The insurance provider sent cancellation notices to the policyholders; the policyholders informed the insurer that they had sent the premiums to Hunt. All told, Hunt failed to remit over \$22,000 in premium payments. Hunt pleaded guilty and was sentenced to two years in the House of Correction, suspended for 20 years, with 18 months of home confinement wearing an electronic bracelet. Hunt was also ordered to pay full restitution.

- **Commonwealth v. Howard Levitz** (Norfolk Superior Court) Levitz, an insurance broker since 1983, failed to remit premiums on at least 48 occasions in 1996, totaling more than \$100,000. Pursuant to an agreed plea recommendation, Levitz pleaded guilty and was sentenced to one year in the House of Correction, suspended for three years of probation, with 120 days of home confinement. Levitz paid \$96,777.91 in restitution on the date of the plea.
- **Commonwealth v. William McGowan** (Suffolk Superior Court) As an insurance agent, McGowan conspired with his client to avoid workers' compensation insurance premiums. He was sentenced to two years in the House of Correction, 60 days to serve, with the balance suspended for two years, and ordered to pay \$65,000 in restitution and a \$20,000 fine. The restitution and fine were paid in full on the date of plea.
- **Commonwealth v. Darryl Hodges and Kevin Scott** (Dorchester District Court) An insurance company claims adjustor and his accomplice embezzled funds from an insurance company. Hodges, the claims adjustor, pleaded guilty and was sentenced to three years probation, and ordered to pay \$10,000 restitution. Scott admitted to sufficient facts and was ordered to be on probation for three years and to pay \$10,000 restitution.

#### MOTOR VEHICLE INSURANCE FRAUD

- **Commonwealth v. Damarys Vasquez** (Salem Superior Court) A Lawrence/Haverhill auto body shop owner, two vehicle owners, and multiple additional participants engaged in a paper-staged accident, resulting in phony claims for personal injury and property damage. Vasquez pleaded guilty to Motor Vehicle Insurance Fraud and Attempted Larceny Over \$250. She was sentenced to three years probation on both counts, per the Commonwealth's recommendation. Eight co-defendants were arraigned on related charges in Fiscal Year 2004; however, those cases were still being litigated at the close of the fiscal year.
- **Commonwealth v. Richard Sullivan** (Norfolk Superior Court) Richard Sullivan, 49, of Quincy, former manager of All Points Glass in Quincy, pleaded guilty to six counts of motor vehicle insurance fraud, one count of larceny and three counts of attempted larceny. Norfolk Superior Court Judge Malcolm Graham Sullivan sentenced Sullivan to serve two- and one-half-years in the House of Correction, with six months committed and the remainder of the sentence suspended for two years. Sullivan was also ordered to complete 100 hours of community service. According to investigators, customers would bring in automobiles for windshield tinting. Sullivan counseled them on how to file a fraudulent broken glass claim with the customer's insurance company. The proceeds from that fraudulently filed claim would be used to pay for the tinting.

WORKERS' COMPENSATION FRAUD

- **Commonwealth v. Jeffrey Hurley** (Essex Superior Court) Hurley and his wife Tracey were involved in multiple schemes in which one of them alleged they were injured in a motor vehicle accident and submitted false wage information to increase their personal injury or bodily injury payments from insurance companies, while continuing to earn income through self-employment. Jeffrey Hurley pursued his claims in an aggressive, intimidating, and often threatening manner. Other charges involved obtaining credit by submitting fraudulent information about income and attempts to involve an adverse driver in an insurance fraud scheme. Jeffrey Hurley pleaded guilty and was sentenced to 10 years of probation. He was also ordered to pay \$60,000 in restitution and fined \$40,000. Tracey Hurley's case remained pending at the close of Fiscal Year 2004.
  - **Commonwealth v. Ricci DeGaetano** (Suffolk Superior Court) This case involved workers' compensation fraud by a former corrections officer, valued at approximately \$82,000. DeGaetano was sentenced to six months committed at the Berkshire House of Correction, five years probation and restitution and fines in the amount of \$126,039.98. DeGaetano also was ordered to forfeit his entitlement to state retirement benefits, per the Commonwealth's recommendation.
  - **Commonwealth v. Patrick O'Shaughnessy** (Suffolk Superior Court) O'Shaughnessy was self-employed as a contractor. With the help of his insurance agent, he avoided paying workers' compensation premiums. O'Shaughnessy pleaded guilty and was sentenced to one year in the House of Correction, with 30 days to be served in home detention with a tracking bracelet; the remainder was suspended for two years. O'Shaughnessy also was ordered to pay \$65,757.50 restitution and \$25,000 in fines.
  - **Commonwealth v. Jesse Maxwell** (Boston Municipal Court) This was a workers' compensation fraud case involving a \$9,000 fraud. A guilty plea resulted in a sentence of one year in the House of Correction, suspended for three years of probation, and restitution.
  - **Commonwealth v. Donald Higgins** (Boston Municipal Court) A carpenter working on the Big Dig collected total disability due to a job-related injury while he was working at another job. Higgins admitted to sufficient facts to warrant a finding of guilty and was ordered to pay full restitution.
  - **Commonwealth v. Steven Smith** (New Bedford District Court) Smith worked fulltime while collecting \$3,000 in disability. A guilty plea resulted in one year in the House of Correction concurrent with a sentence currently being served on unrelated charges, followed by one year suspended, and full restitution.
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- **Commonwealth v. Mark Gomes** (Boston Municipal Court) Gomes allegedly injured his neck and back while working for a construction company. He collected workers' compensation benefits and continued to do so even after returning to work. Gomes fraudulently received \$5,300 in benefits. After a bench trial, he was found guilty and sentenced to two years in the House of Correction, six months to serve, with the balance suspended for three years, and a \$1,000 fine.

#### PROPERTY FRAUD

- **Commonwealth v. Thomas O'Brien** (Essex Superior Court) This construction contractor submitted phony claims for the theft of \$125,000 of equipment. O'Brien pleaded guilty and was sentenced to five years probation, full restitution and fined \$21,000.
- **Commonwealth v. Gary Baker** (Stoughton District Court) Following a move, Baker submitted two fraudulent claims to his insurer alleging the loss or theft of business papers and personal property. His claims totaled over \$64,000. Baker pleaded guilty and was sentenced to two years probation and a \$1,800 fine.
- **Commonwealth v. Claudio Velez** (Quincy District Court) Velez pawned two watches, reported them stolen, and collected insurance proceeds. He was sentenced to nine months in the House of Correction, suspended for 18 months, and ordered to pay restitution in the amount of \$24,839.28.
- **Commonwealth v. Leslie Weiser** (Dedham District Court) Weiser made a claim under his homeowner's insurance policy for alleged water damage to, among other things, an oriental rug valued at \$5,000. Subsequent investigations showed that the rug was not in Weiser's home at the time of the water damage. Weiser admitted to his fraudulent activities, pleading guilty at his arraignment. He was sentenced to one year probation, ordered to pay \$2,700 restitution, and fined \$20,000.

#### UNEMPLOYMENT COMPENSATION FRAUD

- **Commonwealth v. Cecedio Tramontozzi** (Suffolk Superior Court) Tramontozzi, as owner of two businesses, failed to remit payments to the Division of Employment and Training (DET) in the amount of \$124,000. He dissolved one company, A.L. Corporation, and formed another, A.L. Limited, to escape the former's accrued liabilities, which included federal and state payroll tax withholding as well as non-payment to DET. Tramontozzi pleaded guilty and was sentenced to one year in the House of Correction, suspended for three years, ordered to perform 100 hours of community service, fined \$1,000, and ordered to make a restitution payment of \$67,000.



- **Commonwealth v. Valerie Prouty & Steven Salerno** (Hampden Superior Court) While operating a security guard company, Prouty failed to pay DET approximately \$139,000. To avoid paying the money owed, Prouty and her fiancé, Steven Salerno, put the company in his mother's name. The amount still owed to DET after the title transfer was \$48,840. Both Prouty and Salerno pleaded guilty. Salerno was sentenced to one year in the House of Correction, suspended for five years. Prouty was sentenced to one year in the House of Correction, 30 days to serve, with the balance suspended for five years.
- **Commonwealth v. Beau Boyle** (Concord and Wrentham District Courts) Boyle committed separate instances of unemployment compensation fraud, using two social security numbers. He pleaded guilty and was sentenced to three years probation with full restitution, over our objection. In the second instance, Boyle was sentenced to two years in the House of Correction, with six months to serve, balance suspended for three years, and \$19,602.28 restitution, per the Commonwealth's recommendation.
- **Commonwealth v. Adam Collins** (Suffolk Superior Court) Collins committed larceny and uttering in connection with passing counterfeit DUA checks through Citizens Bank branches and was working while collecting benefits. Collins pleaded guilty to all 40 counts and was sentenced to two- and one-half years, committed, in the House of Correction, probation for three years and restitution of \$18,138.

#### DET POST-CONVICTION CASES CLOSED IN FISCAL YEAR 2004

The IUFD has a cooperative agreement with the Division of Employment and Training, helping ensure that outstanding restitution is paid to DET. One of IUFD's roles in collecting these outstanding balances included court appearances at post-conviction restitution status hearings. Assistant Attorneys General were assigned to DET post-conviction cases on a rotating basis throughout the year. The IUFD Assistant Attorneys General represented the Commonwealth's interests in these settlement agreements, ensuring that the taxpayers' interests were taken into account.

The following cases were fully closed out in Fiscal Year 2004, after restitution settlements were agreed upon.

- **Commonwealth v. Robert Gelles** (Boston Municipal Court) This case involved fraud perpetrated against DET. In this particular case, the total amount defrauded was \$15,288.56. Gelles was in good standing with the court, having appeared when required and having made the required payments. An agreed-upon settlement for Gelles' remaining balance was paid in court, and the case was dismissed at a final restitution status hearing.



- **Commonwealth v. Raymond Aho** (Boston Municipal Court) This case involved fraud perpetrated against DET. The total amount defrauded was \$24,360.64. The defendant paid all his required restitution, and the case was dismissed and officially closed in the DET database.

#### PERSONAL INJURY FRAUD

- **Commonwealth v. Edward Lopes** (Bristol Superior Court) Lopes had collected workers' compensation benefits and committed perjury in connection with a Division of Industrial Accidents proceeding. His guilty plea resulted in two years probation, a \$1,000 fine, and an additional order to pay \$1,250 in court costs.

### STATISTICAL SUMMARY

During Fiscal Year 2004, IUFD indicted or charged 48 cases. A total of 45 cases were disposed of, either by trial or change of plea. Of these 45 cases, 16 defendants were ordered to serve committed time in a county House of Correction. The disposed cases resulted in assessed fines of \$130,822. Restitution in these 45 cases totaled \$967,795.

#### REFERRALS

<u>REFERRAL SOURCE</u>	<u>NUMBER OF REFERRALS</u>
Insurance Fraud Bureau	28
Insurance Fraud Bureau/Division of Insurance/ Attorney General/District Attorney Referrals	4
Other Insurance Companies	18
Department of Employment and Training	2
Department of Employment and Training — Post-conviction	72
Department of Employment and Training Referrals to the Attorney General's Fair Labor and Business Practices Division	96
Governor's Auto Theft Strike Force	0
Letter	16

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National Insurance Crime Bureau	9
Suffolk County District Attorney's Office	5
Telephone	95
Walk-In	1
Other Divisions at the Attorney General's Office	6
Federal Agencies	0
Police Agencies	1
Other State Agencies	6
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<b>TOTAL</b>	<b>359</b>

INVESTIGATIONS OPENED

<u>REFERRAL SOURCE</u>	<u>NUMBER OF REFERRALS</u>
Department of Employment and Training	3
Department of Employment and Training — Post-conviction	53
Department of Employment and Training Referrals to the Attorney General's Fair Labor and Business Practices Division	0
Governor's Auto Theft Strike Force	0
Insurance Fraud Bureau	21
Insurance Fraud Bureau/Division of Insurance/ Attorney General/District Attorney Referrals	9
Letter	0
National Insurance Crime Bureau	9

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Suffolk County District Attorney's Office	9
Telephone	3
Walk-In	0
Other Divisions at the Attorney General's Office	2
Federal Agencies	0
Insurance Companies	20
Police Agencies	0
Other State Agencies	3
Insurance Fraud Bureau — Post-conviction	2

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<b>TOTAL</b>	<b>134</b>
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#### OTHER STATISTICS

Investigations Closed without Prosecution	148
Cases Charged	48
Cases Disposed of	45
Case Disposed with Committed Prison Time	16
Restitution and Fines Recovered	\$1,098,617

### SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

During Fiscal Year 2004, IUFD continued efforts to develop and investigate health insurance fraud cases. As part of this effort, the division fostered its relationship with the FBI's Health Care Fraud Task Force, focusing on provider fraud cases. IUFD has also established a private health insurance task force with Blue Cross/Blue Shield, Tufts, and Harvard Pilgrim in an effort to identify appropriate cases to

investigate and prosecute. Several cases are currently being investigated as a result of the task force. IUFD also receives case referrals directly from the health insurers in cases that are beyond the scope of the task force, and that also are being evaluated and investigated by IUFD.

IUFD continued efforts to combat arson-related cases by furthering its relationship with the ATF and the State Fire Marshall's Office. Several cases have been referred to IUFD. One such case against Robert Therrien was successfully prosecuted this fiscal year.

Another area in which IUFD focused significant efforts was in fighting fraud related to the Central Artery Tunnel Project, also known as the "Big Dig." IUFD investigated a number of cases involving employees who were allegedly injured while working on the Big Dig. All of these workers went out on disability because of their purported injuries, and began collecting workers' compensation insurance. In each instance, evidence has been developed suggesting that the employee began working another job or jobs and misrepresented his employment status to the relevant insurer. Our objective in the coming fiscal year will be to charge several of these cases together, to serve as a deterrent as well as punishing these wrongdoings.

## OUTREACH, EDUCATION, AND TRAINING

During Fiscal Year 2004, IUFD staff attended trainings on a regular basis, including the Eastern Regional Trial Advocacy Training Academy sponsored by the National Association of Attorneys General in Washington, D.C.; National District Attorney Association Training in Columbia, South Carolina; Detective/New Criminal Investigator School offered by PATC; Electronic Surveillance Techniques offered by NATI; and Financial Analysis training given by the NW3C. Staff also attended programs offered by the AG Institute and in the Citizen Schools Legal Apprenticeship Program, helping grade school students with writing skills in preparation for advanced studies.

IUFD Division Chief Eliot Green gave two speeches to outside groups, the National White Collar Crime Center and the Board of Professional Licensure. The first was a lecture for investigators on the topics of effective report writing, and effective preparation and delivering testimony. The second presentation was delivered at a chiropractic seminar regarding chiropractic fraud.

## CRIMINAL JUSTICE POLICY DIVISION

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The Criminal Justice Policy Division (CJPD) was created in July 2002, in conjunction with the consolidation of the Community-Based Justice Bureau into the Criminal Bureau. The mission of CJPD is to understand and assess topical criminal justice policy issues and advise the Attorney General and his staff so that they may effectively carry out the Attorney General's leadership role as the Chief Law Enforcement Officer in the Commonwealth. Through collaborative relationships with all members of the criminal justice community, CJPD is uniquely positioned to use its knowledge and experience to further decision-making that is in the public interest. Toward this end, CJPD's responsibilities fall into five broad categories: 1) liaison to external criminal justice and law enforcement agencies and organizations; 2) criminal justice legislation; 3) criminal justice education; 4) crime prevention initiatives; and 5) policy-based appellate briefs, *amicus* briefs, investigations and prosecutions, and various other special assignments.

The Criminal Justice Policy Division included James O'Brien, Division Chief; Marsha Cohen; Jean Fanning; Pamela Hunt; Emily Paradise; and Catherine Sullivan.

### SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

An important role of the division's attorneys is serving as liaisons to external law enforcement agencies and organizations. The meetings and personal contacts are one of the primary means by which CJPD learns of, and becomes knowledgeable about, the important criminal justice issues of the day. During Fiscal Year 2004, CJPD attorneys interacted with the Anti-Terrorism Task Force, Appellate Bench Bar Committee, Boston Bar Association Criminal Justice Section, Massachusetts Statewide University and College Coalition on Underage and Problem Drinking, Commonwealth's Appellate Attorneys Action Project, Commonwealth's Criminal Justice Research Group, Criminal History Systems Board, Department of Public Health Drug Trends Advisory Group, Department of Public Health Emerging Drugs Task Force, Elder Abuse Project Steering Committee, Equal Justice Partnership, Governor's Advisory Council on Alcoholism and Drug Rehabilitation, Massachusetts Association of Campus Law Enforcement Administrators, Massachusetts Chiefs of Police Association, Massachusetts Sentencing Commission, Massachusetts Bar Association Corrections and Sentencing Practice Group, MDAA/AGO Criminal Rules Training Working Group, MDAA Legislative Subcommittee, MDAA

Juvenile Justice Subcommittee, MDAA DNA Working Group, MDAA Sexually Dangerous Person Working Group, Massachusetts Emergency Management Agency, Municipal Police Training Committee, SJC Standing Advisory Committee on Criminal Rules, Statewide Child Fatality Review Team, and the Trial Court Criminal Standing Committee of the MassCourts Project.

Criminal justice legislation is another core function of CJPDP. It works closely with, and serves as the Criminal Bureau's primary liaison to the Attorney General's Policy and External Affairs Division. In Fiscal Year 2004, CJPDP played a coordinating role in soliciting ideas and making recommendations on the Office of the Attorney General's slate of criminal bills. It drafted and testified on behalf of various proposals. In addition to the Attorney General's own bills, CJPDP also: 1) participated on the MDAA Legislative Subcommittee and shared information, ideas, and respective priorities within and between a variety of law enforcement agencies; 2) helped draft, edit, and review other legislation affecting the criminal justice system; and 3) made recommendations to the Attorney General on supporting or opposing specific pieces of legislation.

During Fiscal Year 2004, significant bills that either were sponsored by the Attorney General's Office or were the subject of noteworthy CJPDP involvement included: Sentencing Guidelines; Wrongful Conviction Compensation; DNA Database Expansion; ID Theft; Home Improvement Contractor Regulations; Assault Weapons Ban; CORI Checks for Certain Businesses and Nursing Homes; Mandating Courts to Advise Defendants About Deportation Consequences During Change of Plea Colloquy; Safe Havens for Unwanted Newborns; Child Endangerment; Needle Exchange; Sexually Dangerous Persons; Information Sharing About Juveniles; Conducting Eyewitness Identifications; Post-Conviction DNA Testing; Electronic Recording of Interrogations; Victim Bill of Rights; Empanelling Grand Jury with Statewide Jurisdiction; Taxpayer ID Numbers for Immigrants Without Social Security Numbers for Driver's License Application; Mandating Police Training for Interaction With Persons With Mental Illnesses; Gun Legislation Making FID Cards Good for Life; Mandating Reporting of Suspicions of Child Abuse by Doctors and Other Health Professionals to District Attorneys in addition to DSS; and Outside Sections to the Budget.

The Environmental Endangerment Act, G.L. c. 21L, an important piece of the Attorney General's criminal justice legislative slate, was enacted into law and became effective on July 1, 2003.

CJPDP's primary function is policy, not programs. Notwithstanding, from time to time CJPDP becomes involved in crime prevention initiatives, either because the program started as a policy idea within the division, or because there is a particular interest or expertise in that area. Noteworthy crime prevention initiatives included:

- 9/11 Hate Crimes Working Group/Anti-Terrorism: CJPB continued to represent the Criminal Bureau in activities related to the events of 9/11, including as a liaison to law enforcement personnel involved in anti-terrorism efforts, and civil rights staff working to protect people, who are or may be the subject of hate crimes and other animosity as a result of the terrorist attack;
- Sportsmanship Alliance of Massachusetts (SAM): Formerly known as the Massachusetts Alliance for the Promotion of Sportsmanship (MAPS), SAM is an alliance of professional sports teams and other organizations committed to changing the culture of sports in the Commonwealth by promoting sportsmanship and reducing sports violence and unsportsmanlike conduct. CJPB has played a significant role on the Policy and Guidelines Committee, attending meetings, contributing to the proposal of the structure and governing rules for a freestanding 501 (c) (3) charitable organization that will conduct the business of the Alliance, redrafting Alliance bylaws to meet its specific needs, and assessing the support level from professional teams in order to determine whether it is feasible to incorporate.

### SIGNIFICANT CASE SUMMARIES

- **DYS Cases: Andrew v. Department of Youth Services, Commonwealth v. Andrew, and Commonwealth v. Eliot E.** (SJC and Lynn Juvenile Courts; all of the cases were impounded). These cases involve constitutional and legal challenges to the statutory process for extending a juvenile's commitment to the Department of Youth Services (DYS) beyond his or her 18<sup>th</sup> birthday. Working closely with DHS legal counsel and the qualified examiners contracted by DHS to evaluate, CJPB helped DHS set up a process to handle these cases that would pass constitutional muster and have a good record for appeal. Before the end of Fiscal Year 2004, CJPB presented oral argument in the SJC in Andrew v. DHS on whether there was a right to bail or other process while awaiting trial on continued control and subsequently filed a post-argument supplement to the brief addressing the court's concerns. The case was under advisement. CJPB represented DHS on appeal in Commonwealth v. Eliot E., which raises similar issues.
- **RCAB Grand Jury Investigation** (Suffolk Grand Jury) The Division Chief was involved extensively as a member of the Office of the Attorney General team that investigated the Roman Catholic Archdiocese of Boston (RCAB). The investigation consisted of two phases: 1) assessing whether clergy/RCAB personnel, with a history of sexual misconduct involving a minor, remained in positions that presented a current risk for committing such misconduct; and 2) historical

review of management knowledge and decision-making regarding clergy/RCAB personnel accused of sexual misconduct involving a minor, and whether the management conduct rose to the level of criminal misconduct. In Fiscal Year 2004, the Attorney General's 16-month investigation into the RCAB ended, and the Office issued its final report on the "Sexual Abuse of Children in the Roman Catholic Archdiocese of Boston." The 76-page report was a collaborative effort of staff from across the Office of the Attorney General, including the Criminal, Public Protection and Executive Bureaus. The Division Chief was involved in drafting, reviewing, and editing the report as well as preparing the Attorney General for a news conference announcing the investigation results.

- **Commonwealth v. William Rodriguez, et al.** (Lawrence B&E case) (Middlesex, Essex, Norfolk, and Hampden Superior Courts) This case involved the prosecution of a burglary ring that targeted retail stores around the state. One-hundred-sixteen indictments were returned against nine men on six break-ins that took place in four counties (Middlesex, Essex, Norfolk, and Hampden). Previously, four of the defendants had pleaded guilty to all charges against them and received committed sentences. In Fiscal Year 2004, a fifth defendant was rendited from Florida (where he was serving a state prison sentence) back to Massachusetts, and arraigned in the four counties where he had cases pending. He pleaded guilty in all of the cases and to all charges pending against him, and received a state prison sentence for his involvement in the B&E ring. Also in Fiscal Year 2004, the purported ringleader and one of the two remaining defendants went to trial in Hampden County. The ringleader was convicted by a jury on the lead charge of B&E in the nighttime with intent to commit a felony, and acquitted on three stolen motor vehicle charges. He received a committed sentence, from and after a second-degree murder sentence he was currently serving. The sole remaining defendant (excluding the cooperating witness) had his case put over for trial past Fiscal Year 2004.

- **Commonwealth v. Jeffrey Bly** (Supreme Judicial Court and Suffolk Superior Court) This case is the appeal from the conviction of Bly for the 1995 murder of Assistant Attorney General Paul McLaughlin. The Superior Court held a hearing on the Commonwealth's motion for a colloquy with the defendant on a potential conflict of interest by appellate counsel. After appointing separate counsel for the defendant for purposes of the colloquy, and conducting a thorough and lengthy colloquy, the court found the defendant knowingly and voluntarily waived any potential conflict and consented to have the particular attorney as appellate counsel.

- **Coe v. Sex Offender Registry Board (SORB)** (Supreme Judicial Court) CJPB was involved in working with the Government Bureau in Coe, a case challenging the constitutionality of



legislation that allows SORB to post information about Level 3 sex offenders on the Internet. Division attorneys reviewed drafts of the SORB brief and were actively involved in the solicitation, preparation, and editing of *amicus* briefs as well as participating in the moot court preparation for argument.

## OUTREACH, EDUCATION, AND TRAINING

Another core function of CJPD is to educate and inform on issues of importance to the criminal justice community. This task is accomplished in three distinct ways: 1) through publication of the *Criminal Justice News (CJN)*; 2) through formal educational training; and 3) through informal educational training.

In Fiscal Year 2004, the division produced a special four-page *CJN* issue focusing on the topic of consular notification requirements after the arrest or detention of foreign nationals, discussed in the Appeals Court decision Commonwealth v. Diemer, 57 Mass. App. Ct. 677 (2003). The Attorney General's Office filed an *amicus* brief in Diemer, which dealt with the consular rights and requirements under the Vienna Convention on Consular Relations. The special issue, which fulfilled the commitment made in the *amicus* brief by the Office of the Attorney General to continue to educate law enforcement and state and local officials on their obligations under the Vienna Convention, was distributed statewide. In addition, the State Department attached the special *CJN* issue to its brief filed in the International Court of Justice as an example of efforts by the United States to educate local law enforcement about the Vienna Convention and consular notification. All CJPD members played a role in producing the special issue.

The four attorneys in CJPD are experienced prosecutors, with both trial and appellate backgrounds. They are frequently invited to serve as faculty/staff for formal training programs. These trainings afford CJPD lawyers the opportunity to share their expertise with other criminal justice professionals. Significant Fiscal Year 2004 trainings in which CJPD staff participated as faculty/staff included:

- AGO/MDAA Criminal Rules Training Group;
- NAAG Trial Advocacy Training;
- MDAA Annual Conference on Handling Sexually Dangerous Person Cases;
- AG Institute;
- SJC Historical Society;

- National Moot Court Competition;
- Boston College Law School Constitutional Law Moot Court Team;
- New Jersey Attorney General Trial Advocacy Training;
- Citizen Schools Program to help eighth-grade students improve writing skills and get into the high school of their choice; and
- Annual Prosecutors' Conference.

In addition to the more formal educational assistance and training, CJPB attorneys routinely fielded legal queries and an array of other requests for information and guidance from professionals throughout the criminal justice community. Without giving formal legal opinions, division members provided objective guidance and assistance. A large part of every workweek was spent providing this service to law enforcement officials and others within the criminal justice network. During Fiscal Year 2004, assistance was provided to the Criminal History Systems Board, the Massachusetts District Attorneys Association, Massachusetts District Attorneys' Offices, the Massachusetts Chiefs of Police Association, and the Massachusetts Department of Public Health. The subjects covered were varied, including sexually dangerous person cases, sealing of criminal records, sentencing issues, prosecution of "peeping toms," juvenile records, numerous issues regarding CORI, problems with drug destruction, discovery of investigator notes, criminal record checks of grand jurors for security purposes, notification to state and county retirement boards of conviction of state and local government employees, issues relating to the legal and practical impact of the Supreme Court decision in Crawford v. Washington, bringing an individual serving a Massachusetts sentence in Rhode Island back to Massachusetts to commence sexually dangerous person commitment proceedings, underage drinking and prevention, illegal liquor sales to minors, the legal standard of review of a regulation's statutory authorization, and related appellate procedures, possible crimes involved in assisted suicide, the HIPAA law, law and procedure on detainers filed by other states, an *amicus* brief concerning suggested procedures for Bishop-Fuller subpoena issues, gun dealer licenses, recall of bullet-proof vests, curfews on college campuses, protocols the Office of the Attorney proposed in 1980 for jury selection, drafting of a further appellate review application on the form of second or subsequent offender indictments, stays of execution, and sentencing and probation matters.

## VICTIM COMPENSATION AND ASSISTANCE DIVISION

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The Victim Compensation and Assistance Division provides financial compensation, referrals, and other assistance to victims of violent crime. Most significantly, it assists qualifying victims and their

families in paying for out-of-pocket medical expenses, lost wages, funeral and burial, mental health counseling, and other crime-related expenses. Since 1994, the division has assumed legal and administrative responsibility for receiving, investigating, and determining all compensation claims in accordance with the requirements of G.L. c. 258C. Previously, compensation claims were determined through a litigation-based process in the district courts. In addition, since 2002, the Office of the Attorney General assumed responsibility for the payment of claims, taking over that responsibility from the State Treasurer's Office.

Division staff included Cheryl Watson, Division Director until October 2003; Deborah Fogarty, Division Director after October 2003; Sandra Clark; Elizabeth Desmond; Erica Johnson; Joanna Kennefick; Julie King; Amanda McGee; Laura Michalski; and Linda McDonough. The division operated with four investigators for most of Fiscal Year 2004, and was successful in clearing up a significant backlog of cases from the prior fiscal year, during which the division operated with two investigators. The departure of Linda McDonough in February meant that the division was without an Advocate/Outreach Coordinator for about half of the fiscal year. The position was posted and Gadyflor Nicolas-St.Clair was hired as the new Advocate/Outreach Coordinator.

### STATISTICAL SUMMARY

<u>CLAIM INFORMATION</u>	<u>TOTAL # CLAIMS</u>
New Claims Received	1,277
New Claims Opened	1,536
Supplemental Claims Opened	770
Administrative Review	114
Decision Affirmed	98
Decision Modified or Reversed	16
Homicide Claims	195
Judicial Review	6

In Fiscal Year 2004, the Victim Compensation and Assistance Division received 1,277 new claims. This number represents a slight decline from the 1,392 new claims received in Fiscal Year 2003. During Fiscal Year 2004, the division received 195 homicide claims, down from the 224 claims received in Fiscal Year 2003. The division continued to work on claims submitted by family members of victims of the September 11, 2001 attacks, and paid \$53,122 on 31 claims in Fiscal Year 2004.

#### EXPENDITURES

During this fiscal year, the total compensation awarded to victims was \$2,780,826.60. Approximately \$2.1 million came from state funds, and the remainder from federal funds. This amount represents a decrease in awards of approximately 30% from Fiscal Year 2003 total payouts. This year is the ninth consecutive year in which the division had adequate funding to support expenditures.

#### PROGRAM EVALUATION

An applicant survey was sent to each claimant with decisional letters. The division received 482 completed surveys from claimants. Surveys were overwhelmingly positive, with approximately 85% of claimants agreeing or strongly agreeing that the application was easy to fill out, the letters were easy to understand, and victim compensation staff treated them with respect. In spite of the periodic understaffing, most claimants agreed that these phone calls were returned promptly, and that they were satisfied with the amount of time it took to process their claim.

### SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

#### GRANT ACTIVITY

The division applied for and received a continuation grant for Fiscal Year 2004 from the Executive Office of Public Safety through the Department of Justice, Violence Against Women Act (VAWA) funds in the amount of \$49,988. These funds continue to support Julie King, and subsequently Elizabeth Desmond, an investigator/victim advocate, who provides specialized services to domestic violence, sexual assault, and stalking victims seeking compensation and services from the division.

The division applied for an annual grant for Fiscal Year 2004 from the Department of Justice through Victims of Crime Act Funds (VOCA) in the amount of \$1,520,000. This amount represents 60% of the total state appropriation paid out in the prior fiscal year, and is an increase over the prior VOCA grant amount of \$1,142,000.

### FEDERAL REPORTING REQUIREMENTS

The division submitted its annual Certification Report and Quarterly Reports to the Department of Justice, Office for Victims of Crime for the Victims of Crime Act. In addition, the division submitted quarterly reports to the Executive Office of Public Safety for the grant under the Violence Against Women Act, referenced above. Finally, an annual Performance Report and Grant Application were submitted requesting continuation funding from the Department of Justice through the Victims of Crime Act.

### AUTOMATION

The division continued to work with the Genoa Group in Colorado to improve with the new victim compensation software. Previous issues have been resolved and staff is pleased with the ease and efficiency of the program. The Division Director will continue to work with the software developer to enhance reporting capabilities in order to eliminate the need to manually compute information necessary to complete the quarterly and annual reports to the Office of the Attorney General and the federal government.

### DIVISION MATERIALS

For the third year, in recognition of Victim Rights Week, division staff developed a new calendar using posters created by art students at the Paul McLaughlin Youth Center. The calendar was distributed at the annual Victim Rights Conference in Marlboro held in April 2004.

Using funding available in the VAWA grant, the division reprinted the small “palm” cards that contain information about the Victim Compensation Program. The cards include division contact information as well as the Domestic Violence Safelink 24 Hour Hotline number. There had been several requests from police departments for the cards so that they can be made available to police officers to give to victims at first response.

As a result of a division investigation regarding a mental health provider, the division also enhanced the new mental health verification and treatment form. The form requests more comprehensive information about the mental health treatment being provided to victims. The form was created after reviewing a number of forms that are used by other victim compensation programs across the country.

## OUTREACH, EDUCATION, AND TRAINING

Outreach and training about the program and its benefits continued to be a major focus for Fiscal Year 2004:

- SAFEPLAN domestic violence advocates in Worcester, Pittsfield, and Bridgewater, MA;
- Administrators of VOCA funded programs, sponsored by MOVA;
- Boston Area Sexual Assault Coalition, Norfolk District Attorney's Children's Advocacy Mental Health Providers, Brockton Family Resource Center, Rape Crisis Counselor training at Tufts University, Children's Hospital, Middlesex District Attorney's Office, The U.S. Attorney's Office and U.S. Probation Department, Worcester Youth Guidance Center, Center for Community Health, Education and Research; and
- Members of the division participated in the Office's Sexual Harassment/Diversity Trainings and a training on dealing with difficult callers/walk-ins.

Division staff also represented the Attorney General at a number of committee meetings throughout Fiscal Year 2004:

- Executive Office of Public Safety VAWA Advisory Committee;
- Norfolk District Attorney's Children's Advocacy Advisory Board;
- MOVA Victim Witness Assistance Board;
- MOVA Victim Rights Legislation Working Group;
- MOVA Victim Rights Planning Committee and the 20<sup>th</sup> Anniversary of Victim Rights Law Statehouse Event; and
- Staff were also active on the Office's Employee Benefits Committee and the Diversity Committee.

Division staff attended the NACVB regional conference in Burlington, VT; the Massachusetts District Attorneys Association Training for Experienced/Advanced Advocacy; and the U.S. Attorney's Office Conference on Multi-Jurisdictional Issues in Victim Services in New Hampshire.

## FINANCIAL INVESTIGATIONS DIVISION

The Financial Investigations Division (FID) provides the Criminal Bureau with seven experienced civilian investigative professionals who investigate and assist in the prosecution of white-collar criminal

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cases. These investigations include larceny, identity theft, public corruption, securities fraud, tax fraud, and all other white-collar frauds, which are referred to the division. The investigators bring to the division many years of experience from investigating cases in local, state, and federal government as well as private-sector venues. Investigators assigned to the Financial Investigations Division work as part of the bureau's team approach to criminal investigative work. Division members become involved in matters at the start of investigation and work closely throughout with Criminal Bureau prosecutors and also Massachusetts State Police assigned to the Bureau's Criminal Investigation Division.

Investigators also may be asked to work on a case-by-case basis with investigative or audit personnel from referring agencies such as the Board of Bar Overseers (BBO), Criminal Investigations Bureau of the Department of Revenue (CIB), Department of Education (DOE), Office of the State Auditor (OSA), and Securities Division of the Secretary of State's Office (SOS).

As part of the investigation and prosecution team, division investigators assist in the design and implementation of an investigative plan for each investigation. The planning requires that each member of the division understand the nature of the allegations, elements of the crime, and evidence required to prove the matter at trial.

Criminal Bureau investigations involve prolific documentary evidence, and require division investigators to perform extensive examination and analysis of business, personal, and financial records to document the illegal activities of the white-collar criminal. Additionally, division investigators conduct interviews of victims, witnesses and targets, and provide summary witness testimony before grand juries and at trial. Furthermore, utilizing modern computerized technology, investigators are able to scan a wide array of informational databases as well as the Internet to track and profile potential subjects of criminal investigations.

The majority of the division's investigative assignments come from the Bureau's Corruption, Fraud, and Computer Crime Division. The division works closely with the Chief of the Corruption, Fraud, and Computer Crime Division during the screening process, and then with the assigned assistant attorney general when a matter has been accepted for formal investigation.

During Fiscal Year 2004, the division also committed investigative resources to the Special Investigations and Narcotics Division. Since FID's formation in 1995, it has also performed investigative assignments for the Bureau's Environmental Crimes Strike Force and Appeals Divisions.

This fiscal year, division personnel included two Certified Fraud Examiners and five investigators with backgrounds from the banking and insurance industries. Members of the division for the year

were: Paul Stewart, Division Director, Certified Fraud Examiner (CFE); David Baker; Jennifer Chaves; Michael Guarin; Jen Hollingsworth; Jim McFadden, CFE; and Sallyann Nelligan. Investigator Baker was the recipient of the *Attorney General Edward McCormack Award* for outstanding achievement awarded at the Attorney General's Office Staff Awards Ceremony in September 2003.

## SIGNIFICANT CASE SUMMARIES

Division members served as Commonwealth summary witnesses in the grand jury for a number of matters indicted during the year. Additionally, division members were scheduled to serve as summary witnesses at trial for matters that reached a final disposition as a result of guilty pleas. The division requesting Financial Investigations Division involvement in each matter was the Corruption, Fraud, and Computer Crime Division, and more specific information about each of these matters can be found by referring to the Corruption, Fraud, and Computer Crime Division's section in this report. A statistical summary of matters investigated by the Financial Investigations Division immediately follows the case listings.

The following indicted cases involved multiple business or consumer victims:

- Commonwealth v. Herion Karbunara
- Commonwealth v. David Giovannucci
- Commonwealth v. Al Mondel

The following indicted cases involved employee embezzlement:

- Commonwealth v. Barbara Johnson
- Commonwealth v. Cynthia Perry Alves
- Commonwealth v. Helen Newton

The following indicted cases involved procurement fraud:

- Commonwealth v. Acme Waste Systems, Inc.
- Commonwealth v. Anita Rocheteau



## STATISTICAL SUMMARY

Screenings/Intakes	295
Cases	59
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TOTAL	354

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

The division also performs many administrative duties for the Bureau with respect to cars, seized evidence, and the spending of forfeited funds. The division is responsible for the assignment, reporting, and maintenance of all bureau cars. The division maintains a log of all money seized by the State Police in association with any arrest. The seized money is kept in safety deposit boxes and the contents are inventoried on a quarterly basis by division staff. Additionally, the division prepares an accounting of all funds forfeited through the Special Investigations and Narcotics Division, which are subsequently disbursed in accordance with the Commonwealth's forfeiture laws. The accounting system is designed as a management tool for the bureau, not only to retrospectively track spending but also to project future needs.

The division also works with State Police command to assist with background and warrant checks and NCIC inquiries.

Division members also take a turn in the rotation as duty officers. The daily duty officers' duties involve dealing with all citizen inquiries for that particular day.

## OUTREACH, EDUCATION, AND TRAINING

The staff is also an integral part of the bureau's outreach to referral agencies, maintaining contact with the BBO's Senior Financial Investigator and CIB's Chief Investigator to update them periodically on the status of all referrals from their respective agencies to the bureau. BBO and CIB cases are referred through the Corruption, Fraud, and Computer Crime Division. Our outreach efforts are designed to complement those of the Corruption, Fraud, and Computer Crime Division Chief.

Division members maintain memberships in many external organizations, including the *Boston Clearing House Association-Check Fraud Subcommittee*, *High Tech Crime Investigators Association*, *International Association of Certified Fraud Examiners*, *International Association of Financial Crimes Investigators*, and the *International Association of Law Enforcement and Intelligence Analysts*.

Internally, division members are members of the Attorney General's Benefits Committee, Elder Task Force, Office-Wide Health Care Committee, and Public Records Office, and have volunteered as tutors at the Paul McLaughlin Center.

One member of the division is the Attorney General's liaison with the National White Collar Crime Committee (NW3C) and as a direct result of her efforts, the Attorney General's Office hosted an NW3C-taught course entitled *Financial Records and Evidence Analysis* in January 2004.

As part of the Attorney General Institute (AG Institute), division members have prepared and taught training sessions to their colleagues, as well as personnel from outside referral agencies and groups, such as *Arson Investigators Association*, *Boston Chapter of the International Association of Certified Fraud Examiners*, *Boston Clearing House*, and the *Southeastern Massachusetts Fraud Investigators Association*.

Presentations included:

- Financial Investigative Techniques;
- Bank Information: How to Get It and What It Tells You;
- Interview and Report Writing Techniques;
- Investigating and Preparing an Elder Financial Exploitation Case;
- Investigative Resource Sites on the Internet; and
- Financial Investigations Division Structure and Operation.

Division members attended a number of external training sessions throughout the year including:

- United States Postal Service, *External Crimes Training*, July 2003;
- Bridgewater State College, *Computer Forensic Training*, August 2003;
- Ip3security.com, *IT Security Workshop*, September 2003;
- International Association of Certified Fraud Examiners, *Handwriting Analysis Training*, September 2003;

- Association of Intelligence and Security Studies, *Reid Interviewing Techniques*, October 2003;
- International Association of Certified Fraud Examiners, *Bank Fraud Training*, October 2003;
- *HTCIA Training*, November 2003; and
- State Police Academy, *Internet Crimes Against Children Training*, December 2003.

The division's intern program seeks to provide a valuable one-semester training experience for interested students that have a background in accounting, finance, business law, or criminal justice. Through the efforts of our intern coordinator, the division has been provided with a steady stream of talented interns from graduate and undergraduate programs throughout New England.

As a direct result of their volunteer experience with the division's program, Financial Investigations Division interns have accepted jobs with Hewlett Packard Corporation, John Hancock Life Insurance Company, Suffolk County District Attorney's Office, and the Office of the Attorney General.

## SAFE NEIGHBORHOOD INITIATIVE DIVISION

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First established in Dorchester in February 1993 by the Office of the Attorney General, the Suffolk County District Attorney's Office, the Mayor's Office of the City of Boston, and the Boston Police Department, the Save Neighborhood Initiative (SNI) has evolved and thrived under the leadership of Attorney General Tom Reilly. Based on the premise that no single entity alone can solve all problems faced by a community, the SNI provided a framework for community residents and service providers to work collaboratively with law enforcement and government agencies to identify and address priority public safety and quality-of-life issues in the community. The SNI model has been replicated in a number of communities across the Commonwealth — each using a somewhat different approach. Some are law enforcement-driven while others are community-driven, but all are organized around the three core principles of coordinated law enforcement; neighborhood revitalization; and prevention, intervention, and treatment. During Fiscal Year 2004, the Office of the Attorney General participated in active SNI partnerships in Taunton, Brockton, Orange, and the Grove Hall and Dorchester neighborhoods of Boston. In addition to maintaining various ongoing SNI partnerships, the SNI Division engages in a number of innovative community-based activities to prevent crime and promote public safety, some of which are described in the sections below.

During Fiscal Year 2004, division staff included Division Director Ellen Frank; AAG Jennifer Adreani; Helena Almeida; AAG Linda DelCastilho; Jennifer Grigoraitis; AAG Katherine Hatch; AAG Cheryl O'Connell; Kristen Palma; Christina Ruccio; Lenell Silva; and AAG Neil Tassel.

## SIGNIFICANT CASE SUMMARIES

Community prosecution is critical to the coordinated law enforcement component of the SNI model. As a result of their close and ongoing work with community partners, the Assistant Attorneys General assigned to the SNI establish roles beyond those of traditional prosecutors. They participate in regular community meetings and special events, and serve as valuable resources for law enforcement, residents, and local service providers. As a result of their direct community involvement, the SNI prosecutors are able to assess issues of importance to the community and help determine how resources from the Attorney General's Office, local District Attorney's Offices, and other agencies are best utilized to address those concerns. The Superior Court Assistant Attorneys General for the Dorchester and Grove Hall SNIs prosecute major felonies consisting primarily of serious drug offenses, large-scale drug seizures, armed robberies, armed career criminals, and firearm offenses. The District Court Assistant Attorneys General for the Grove Hall and Lawrence/Methuen partnerships prosecute primarily narcotics, firearms, prostitution, and other quality-of-life offenses that are priorities for the respective communities. The District Court prosecutor for Orange prosecutes all District Court cases arising from the Town of Orange as well as other cases in the Orange District Court jurisdiction involving defendants from Orange. Summaries included below are examples of typical cases handled by SNI prosecutors.

- **Commonwealth v. Dwayne Boudreau** (Orange District Court) The defendant was a Level III sex offender. He was charged with failure to register with the Sexual Offender Registry Board. He pleaded guilty and was sentenced to six months in the House of Correction, suspended for one year. The defendant was subsequently arraigned on a domestic assault and battery. The Commonwealth moved to revoke bail; the motion was granted and the defendant was held. He subsequently pleaded guilty to the assault and battery and was sentenced to one year in the House of Correction. This situation subjected the defendant to SDP action since he was jailed after commitment on the predicate offense.
- **Commonwealth v. Thomas Smith** (Orange District Court) The defendant committed assault and battery on his girlfriend. Because of his previous record, the Commonwealth moved for detention under 58a. The Commonwealth obtained copies of the police reports from the cases in the early 1990s and presented them as evidence along with the current victim's testimony. The judge determined the defendant to be a dangerous person, and the case was set for trial.

The Commonwealth recommended two- and one-half years in the House of Correction, 18 months to serve, the balance suspended two years with a condition that the defendant enter a certified batterers' program. The judge sentenced the defendant to one year in the House of Correction, six months to serve, the balance suspended for two years with a condition that the defendant complete a certified batterers' program.

- **Commonwealth v. Juvenile (Youthful Offender)** (Lawrence District Court) This 16-year-old juvenile and another boy accosted three teenage boys standing outside a variety store. The juvenile pointed a gun at the boys and demanded money and the items they had just purchased. When the boys refused and ran, the juvenile fired a BB gun several times, hitting one of the boys in the back three times. Based on the serious and violent nature of this incident, the age of the juvenile, and his prior record, he was indicted as a youthful offender on charges of Armed Assault with Intent to Rob, Assault and Battery with a Dangerous Weapon, and Assault. The Commonwealth was prepared for trial even if the juvenile changed his plea. The juvenile was just 17 and had never been committed previously, so after careful consideration of the impact of this crime upon the community but also the best interest of the juvenile, the juvenile was sentenced to a House of Correction sentence suspended for two years with strict conditions of job training, education, counseling, a stay-away order, a letter of apology to the victims, and community service.
- **Commonwealth v. Edward Britt** (Suffolk Superior Court) Hearing noise outside before dawn, a young teacher went to see what was occurring, and with his wife and young son watching, the defendant pointed a gun at him and threatened to shoot him. At the time of the offense, the defendant was on probation in Suffolk Superior Court for carjacking. The defendant was subsequently arrested and charged with Assault with a Dangerous Weapon (gun) as a habitual offender. He pleaded guilty to the habitual offender charge and was sentenced to the maximum five years.

## **SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES**

### **BROCKTON SNI**

The Attorney General's Office supports the position of the SNI Community Liaison, who is based in the Plymouth County District Attorney's Office and works closely with that office, with the other principal partners from the City of Brockton and the Brockton Police Department, as well as with community residents and service providers. The Brockton SNI Advisory Council meets monthly to

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discuss community concerns primarily related to crime and public safety. The Brockton SNI collaborates with community service providers and public agencies on a number of initiatives. Two examples of initiatives are listed below.

- **Vacant Lot/Neighborhood Clean-Ups:** This initiative is a partnership among the Plymouth County District Attorney's Office, the Mayor's Office, the Office of Community Corrections, and the Department of Public Works. The purpose of the project is to provide community residents with assistance in cleaning vacant lots and neighborhood streets in the SNI target area that may pose crime or health and safety hazards if not maintained.
- **Landlord Notifications:** The purpose of this initiative is to provide notification to landlords whose tenants have been charged with drug-related offenses. Landlords are given information regarding their obligations to maintain the safety of their properties. The SNI Community Liaison works with the District Attorney's Office on this initiative and is responsible for implementing the system for notifications.

#### DORCHESTER SNI

The Dorchester SNI Advisory Council continued to meet monthly to identify and address the most pressing public safety and quality-of-life issues, including many that have consistently plagued the community (e.g., youth violence, truancy, and a lack of job and training opportunities). The Boston Police Department and other law enforcement partners focused primarily on "impact players" involved in criminal activity and quality-of-life issues, while service providers focused on providing after-school programming offering recreational, educational, and job training programs. In order to bolster the capacity of community agencies to address these issues, the Attorney General's Office allocated \$200,000 of its Fiscal Year 2004 budget to eight community-based agencies and the Boston Police Department for crime prevention initiatives in the SNI target area. Additionally, with \$166,667 in Byrne Memorial Grant funds from the Executive Office of Public Safety and an equal amount from partners for the required hard-cash match, the SNI Division and Dorchester SNI partners implemented the second year of the *Dorchester Youth and Family Project* described in the "Byrne Memorial Grants" section later in this report.

In a cross-bureau initiative, the SNI Division worked with the Office of the Attorney General's Mediation Services Division to implement *Youth Mediating Solutions* in the Dorchester SNI (as well as in the Brockton and Grove Hall SNIs). *Youth Mediating Solutions* was funded by a Byrne Memorial Grant from the Executive Office of Public Safety and was a community-based peer mediation program based on the Office's school-based SCORE program. After a competitive RFP process, the Teen Center

at St. Peter's, a Dorchester SNI partner agency, was selected to be the sub-grantee. Four adult coordinators and 19 teens were trained as mediators through this project.

#### GROVE HALL SNI

In October 2003, the Grove Hall Safe Neighborhood Initiative began its eighth year as an officially recognized Weed and Seed site as designated by the Department of Justice, Executive Office for Weed and Seed. At that time, the Department of Justice, through the Attorney General's Office, awarded \$225,000 to the Grove Hall SNI/Boston Weed and Seed Site to support its activities centered on the four core Weed and Seed principles: (1) Law Enforcement; (2) Community Policing; (3) Neighborhood Restoration; and (4) Prevention, Intervention, and Treatment. The Attorney General sub-contracts all Weed and Seed funds to the Boston Police Department and other community-based agencies serving the neighborhood. Also this fiscal year, on behalf of the Grove Hall SNI/Boston Weed and Seed Site, the Attorney General's Office applied for and was awarded an additional \$100,000. These funds originate from HUD, are administered through the Department of Justice, and are designated to address violent crime and drugs in housing that is federally assisted. The Grove Hall SNI/Boston Weed and Seed Site is earmarking these funds to pay for increased law enforcement and coordination activities and community organizing and outreach to engage residents in improving public safety at several multi-unit housing units that are locations for some the most challenging criminal activity in the target area.

Each year the Grove Hall SNI/Boston Weed and Seed Site holds seven Coordinating Council meetings and five meetings in the community that are attended by dozens of community residents in addition to representatives from law enforcement, government agencies, courts, service providers, and faith-based organizations.

#### ORANGE SNI

The Orange SNI is a collaboration of the Attorney General's Office and the Northwestern District Attorney's Office, with the Town of Orange, the Orange Police Department, community residents, educators, government agencies, and service providers. The Orange SNI Advisory Council meets monthly and this year continued working toward identifying priority public safety and quality-of-life issues. Among this fiscal year's activities, several Orange SNI partners, including the Office of the Attorney General, joined forces to sponsor two educational workshops: (1) a workshop on Elder Protection issues for area seniors and local service providers, and (2) an educational workshop for service providers on the sex offender registry. The Assistant Attorney General assigned to the Orange District Court prosecutes criminal cases occurring in the Town of Orange and offenses committed by Orange residents in other towns in the court's jurisdiction. Her caseload primarily involves offenses



including domestic violence and other assaultive conduct, breaking and entering, and substance abuse involving both alcohol and narcotics.

#### TAUNTON SNI

The Taunton SNI continues to focus on law enforcement, prevention, and neighborhood restoration through the activities of its sub-committees and collateral activities (i.e., Criminal Justice, Treatment and Prevention, Education, Neighborhood, Crisis Intervention Team, and a Community Crisis Spiritual Care Response Team). During Fiscal Year 2004, the Taunton SNI focused on escalating violence at the Fairfax Gardens housing development, with each subcommittee developing a 12-month plan to address the issues at the development. The City of Taunton plays the primary leadership role for the Taunton SNI. In addition to participating on the SNI Advisory Council, the SNI Division continued to facilitate the collaboration of the Attorney General's Office with the City of Taunton and Pro-Home, Inc. on the rehabilitation of a previously abandoned single-family home on Highland Street. Rehabilitation of the property was completed during Fiscal Year 2002, and in August 2003, a lottery was held to select a prospective home-buyer from among a group of qualified applicants. During this fiscal year, the property was sold below cost to the selected family.

#### LAWRENCE AND METHUEN WEED AND SEED SITES

SNI program staff represent the Attorney General on the steering committees of both the Lawrence and Methuen Weed and Seed sites, each in its third year as an officially recognized Weed and Seed site as designated by the U.S. Department of Justice, Executive Office for Weed and Seed. Additionally, the Office of the Attorney General supports the Lawrence and Methuen Weed & Seed efforts through the provision of the *Lawrence/Methuen Arlington Safe Neighborhood Initiative Community Prosecutor* as described in the "Byrne Memorial Grants" section later in this report.

#### SNI JOBS FOR YOUTH

One of the major SNI Division efforts aimed at prevention and intervention is the SNI JOBS FOR YOUTH Program. The program, which started in 1996, has grown from employing 23 youth in five communities in that year to employing more than 80 young people in 12 communities throughout the Commonwealth in Fiscal Year 2004. In Fiscal Year 2004, the SNI Division expanded the JOBS FOR YOUTH program to include the communities of Lawrence, Methuen, and Orange, all of which have SNI or Weed & Seed collaborations in place. The program was advertised locally in each community and awardees were selected after a competitive RFP process. All JOBS FOR YOUTH sites offer job opportunities throughout the school year, as well as a variety of workshops and enrichment activities such as mock interviews, resume writing, and community service projects. Each site is briefly described below.



- **Boston:** Eighteen youth from the Grove Hall and Dorchester SNI target areas were employed through the City of Boston's Centers for Youth and Families. The goal is to provide employment opportunities, hands-on training, safe havens, and adult support. Partnering with local businesses and agencies, Boston Centers for Youth and Families placed young people in a variety of positions, enabling them to learn skills related to entrepreneurship, leadership, and civic duty. Placements included local community centers, private businesses, and neighborhood social services agencies.
- **Brockton:** The Old Colony YMCA in Brockton just completed its eighth year as a JOBS FOR YOUTH site. The program serves teens in the Brockton area who reside in the SNI target area and are enrolled in school or another educational program. The program's goal is to provide job opportunities, educational trainings, and recreational activities. This fiscal year the three teens, ages 16 to 17, worked at an after-school community center.
- **Chelsea:** This year marked the City of Chelsea's ninth year as a JOBS FOR YOUTH site. In addition to employment, the program offers opportunities for recreational team-building and for helping the youth develop skills enabling them to choose challenging careers. This fiscal year, the program provided positions for four Chelsea teens at several area businesses and city agencies, including the Chelsea Public Library and Chelsea Cable TV. The teens also worked on a community service project in which they researched Chelsea's female historical figures as part of a Library exhibit.
- **Holyoke:** Holyoke's JOBS FOR YOUTH program is administered by the Teen Resource Project, which serves youth from low-income neighborhoods, particularly in downtown Holyoke. This program reinforces literacy skills, education, and responsible work behavior. Over the course of the fiscal year, five youth, ages 13 to 15, assisted as readers and mentors, and read to younger children at sites including family shelters and after-school programs.
- **Lawrence:** The Lawrence JOBS FOR YOUTH program is administered by Lawrence Community Works, Inc. Five youth, ages 16 to 22, served as assistant instructors at after-school programs with younger children. Lawrence Community Works, Inc. partnered with the local Workforce Investment Board to offer a comprehensive job training curriculum and a summer employment recruitment fair to its program participants.
- **Lynn:** Lynn's program is administered by the City of Lynn's Office of Economic and Community Development and serves disadvantaged and at-risk youth. During this fiscal year, the program employed seven teens who worked in various positions at after-school programs and community arts programs.

- **Methuen:** Five youth, ages 14 to 16, participated in the Methuen JOBS FOR YOUTH program. All the teens are residents of the Methuen Weed & Seed target area and worked at the Methuen Arlington Neighborhood, Inc., which is considered the safe haven for the Weed & Seed site. The teens provided after-school homework assistance and activities and also received more than 40 hours of computer and job skills training.
- **New Bedford:** Ten at-risk youth, ages 16 to 21, from New Bedford received training through the University of Massachusetts/Dartmouth Division of Continuing Education. The goal of the program is to provide training and support for youth to become employed and to continue their education. Internship placements include local businesses, courthouses, colleges, social service agencies, and the City of New Bedford.
- **Orange:** The Orange JOBS FOR YOUTH program was developed through a collaboration among the Town of Orange, the Franklin/Hampshire Career Center, the Department of Social Services, and several community organizations. The Career Center manages the program and places DSS-involved youth residing in the Town of Orange at work sites in town agencies and local nonprofits. Program participants also participate in job training and academic support sessions. In this fiscal year, 11 youth participated in the program.
- **Springfield:** The Springfield SNI JOBS FOR YOUTH program is administered through the Springfield Southwest Community Health Center and serves youth from low-income families. The program provides youth with opportunities to increase their employability, self-esteem, and knowledge and skills in the area of health promotion. Five youth, ages 13 to 19, were employed as Youth Health Liaisons during this fiscal year. They participated in delivering health education information, including violence prevention, to other youth at local community centers, and assisted with MassHealth and Health Center enrollment.
- **Taunton:** Five youth, ages 16 to 18, were placed through the Taunton Department of Human Services during this fiscal year. The youth were assigned to various agencies, including the Boys and Girls Club of Taunton, the City of Taunton's Law Department, and the Taunton Department of Human Services. The program's goal is to provide employment and educational opportunities to youth to build skills and future employment capability.
- **Worcester:** The JOBS FOR YOUTH program in Worcester, run by the YMCA of Greater Worcester, serves at-risk youth in the Worcester area. Eighteen youth, ages 15 to 17, participated during the fiscal year and were employed as computer technical assistants, office assistants,

farm assistants, and medical laboratory assistants. The participants also completed an eight-week employment training program and performed 100 hours of volunteer work.

On May 5, 2004, approximately 75 youth, program coordinators, and employers from all 12 SNI JOBS FOR YOUTH sites attended a recognition event at the Attorney General's Office. The purpose of the event was to provide program participants the opportunity to meet teens from other sites as well as to be recognized by the Attorney General's Office for their achievements. A program coordinator, an employer, and a participating youth each highlighted the value of the SNI JOBS FOR YOUTH program in giving young people the chance to develop job skills and work experience. The Attorney General's First Assistant made brief remarks and then awarded certificates to each of the participants.

#### BYRNE MEMORIAL GRANTS

- **Dorchester SNI Youth and Family Project:** Fiscal Year 2004 marked the second year of the Dorchester Youth and Family Project, which complemented the ongoing efforts of the Dorchester SNI by focusing services on the diverse youth in the SNI target area. Funding supported a variety of programming to coordinate enrichment and recreational activities for youth. Additionally, Byrne funding also supported training for police officers on issues related to child witnesses and violence and expanding therapeutic resources for adolescent witnesses to violence. The sub-grantees contributed the required 50% hard-cash matching funds for this project.
- **Lawrence/Methuen Arlington Safe Neighborhood Initiative Community Prosecutor:** In December 2003, an Assistant Attorney General was assigned to the Essex County District Attorney's Office to provide a district court community prosecution component to Lawrence and Methuen Weed and Seed initiatives. The SNI Community Prosecutor maintains a caseload consisting primarily of narcotics and priority quality-of-life offenses arising from the targeted Arlington neighborhood that spans the cities of Lawrence and Methuen. The prosecutor also seeks to improve coordination and communication between law enforcement and the community by regularly attending relevant public safety and community meetings in both cities. The Office of the Attorney General contributed the required 50% hard-cash matching funds for this project.
- **SNI Community Re-Entry Project:** The Re-Entry Project began its third year of funding during Fiscal Year 2004 and is integrated with the efforts of the Dorchester and Grove Hall SNIs. There are two project components: (1) the Grove Hall component focuses on juvenile offenders ages 14-21 returning to the Grove Hall neighborhood upon release from custody in

a Department of Youth Services secure treatment facility; and (2) the Bowdoin-Geneva component focuses on offenders ages 17 to 24 returning to the Bowdoin-Geneva neighborhood following a period of incarceration at the Suffolk County House of Correction. Both components utilize an enhanced case-management model to provide the necessary assistance for participants to successfully return to their communities. Re-entry coordinators for each component manage a caseload of approximately 20 to 30 offenders over the year. The principal partners coordinating with the Office of the Attorney General on the Grove Hall component are: The Department of Youth Services, Roxbury Youthworks, Inc., the Boston Police Department, and the Suffolk County District Attorney's Office. The principal partners coordinating with the Office of the Attorney General on the Bowdoin-Geneva component are: the Suffolk County Sheriff's Department, Community Resources for Justice, Inc., the Boston Police Department, and the Dorchester District Court Probation Department. The sub-grantees and the Boston Police Department provided the required 50% hard-cash matching funds for this project.

- **Youth Empowerment Skills (YES) Project:** The YES Project was initiated in the fall of 2000 in response to a need for after-school and violence prevention programming as identified by the Dorchester Safe Neighborhood Initiative. The Project was scheduled to end in September 2003; however, utilizing unexpended funds permitted the YES Project Coordinator to continue through December 2003. The YES Project established a partnership between the Office of the Attorney General and the Colonel Daniel Marr Boys and Girls Club/Paul R. McLaughlin Youth Center in Dorchester. The Project aimed to provide teens with supervised after-school activities that offered meaningful life skills education to help youth overcome the negative influences that can lead to school failure, substance abuse, court involvement, or crime victimization. The YES Project also provided training and educational programming for McLaughlin Center staff. A *YES Project Curriculum Manual* was one of the final products developed in connection with the Project. The manual outlines many of the programs offered during the YES Project, thereby facilitating other youth-serving programs to replicate activities and workshops.

The Attorney General's Office distributed the manual to youth-serving agencies across the Commonwealth.

While the formal YES Project concluded in December, the Office of the Attorney General maintained its commitment to the McLaughlin Center throughout Fiscal Year 2004. More than 50 volunteers from the Attorney General's Office participated in club activities, for example: (1) Weekly one-on-one academic tutoring for approximately 15 youth; (2) A workshop for peer leaders on conflict resolution and mediation skills; (3) A college preparation program including college alumni panels, application

workshops, financial aid sessions, college tours, and essay-writing workshops; and (4) A holiday toy drive.

A major focus of the YES Project during its final year of Byrne funding was developing and filming *Understanding Violence*, a film created to help youth explore the underlying causes and consequences of violence. The film (in DVD format) was developed in collaboration with the Gang Unit of the Suffolk County District Attorney's Office and The Mirror Project. A facilitator's guide was also developed in collaboration with the District Attorney's Office. The DVD and guide are available to youth programs throughout the Commonwealth.

The Office of the Attorney General provided the required 50% hard-cash matching funds for the YES Project.

## OUTREACH, EDUCATION, AND TRAINING

The philosophy of the SNI is predicated on partnering with community stakeholders to enhance public safety and quality of life for neighborhoods. As such, all SNI staff regularly participate in formal and informal outreach activities to solidify existing working relationships as well as to build new ones. Moreover, SNI staff serve as resources and provide technical assistance and training both formally and informally to community partners. Many of the SNI Division's outreach, education, and training activities are described in the previous sections of this report.

# GOVERNMENT BUREAU

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ADMINISTRATIVE LAW DIVISION

TRIAL DIVISION

## GOVERNMENT BUREAU

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The Government Bureau provides representation for the Commonwealth and its agencies and officials in all types of civil litigation, and for employees of the Commonwealth with respect to certain civil claims made against them resulting from the performance of their duties. The bureau also provides general advice and consultation to officials with respect to legal issues arising in connection with their official functions, particularly in instances where such advance consultation may serve to prevent unnecessary litigation. As in previous years, the bureau in Fiscal Year 2004, continued its efforts to develop and maintain close working relationships with agency counsel by providing them with information and advice on matters of broad common interest.

The Government Bureau consists of an Administrative Law Division and a Trial Division. During Fiscal Year 2004, several attorneys were assigned permanently to work in both the Administrative Law and Trial Divisions. A sampling of cases from each division was assigned to attorneys in the other, so as to broaden the exposure of the attorneys to the full range of cases the divisions handle. In addition, a number of particularly complex and significant cases were handled by teams assigned to multiple divisions. Both divisions initiated affirmative litigation on behalf of state agencies and the Commonwealth and submitted briefs *amicus curiae* in cases presenting issues of law affecting the Commonwealth's interests.

The Administrative Law Division defends suits concerning the legality of governmental operations, particularly those seeking injunctive or declaratory relief. The division also is responsible for the legal review of all newly enacted town by-laws; the preparation of legal opinions for constitutional officers, heads of agencies, and certain other officials concerning issues arising from the performance of their official duties; and the review of proposed statewide initiative and referendum questions under amendment Article 48 of the Massachusetts Constitution to determine whether such questions are of the type that may lawfully appear on the ballot.

The Trial Division defends suits seeking damages or other relief for alleged wrongful acts of government officials or employees, particularly torts, real estate matters, contract-related disputes, employment disputes, civil rights violations, and environmental damage claims. The Trial Division also reviews certain contracts, leases, bonds, and various conveyancing documents submitted by state agencies for approval as to form.

During Fiscal Year 2004, the Government Bureau included the following staff members: Stephanie Lovell and then David Kerrigan, Chief; Sherrie Costa; Peter Sacks; and Ernest Sarason. Staff members assigned to particular divisions within the Government Bureau are listed below.

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## AFFIRMATIVE LITIGATION

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Both the Administrative Law Division and the Trial Division initiate affirmative litigation on behalf of the Commonwealth, when such litigation is in the public interest; furthers the Attorney General's priorities; and has a significantly high monetary value or raises legal or policy issues of concern to the public and the Commonwealth. The Government Bureau maintained an active docket of affirmative litigation in Fiscal Year 2004, to protect the public interest and the interests of its state agency clients. Highlights of this affirmative litigation were as follows:

- **Attorney General v. Second Chance, Inc.** (Suffolk Superior Court) The Attorney General sued the manufacturer of defective bullet-proof vests sold to Massachusetts law enforcement personnel from 1999 to 2003. It is estimated that more than 4,000 of these vests were sold in Massachusetts. The suit seeks to recover the replacement cost of the vests and other civil damages. Discovery is proceeding.
- **Commonwealth v. Dolphin Forwarding, Inc. and Mary M. White** (Suffolk Superior Court) The Attorney General continued to press a suit on behalf of the state Department of Education against a storage company and its owner for allowing \$1.6 million of food, owned by the Department and local school districts, to become contaminated. The United States Department of Agriculture had donated the food to the department for school lunch programs.
- **Commonwealth v. Eligia Ratchell** (Suffolk Superior Court) The Attorney General continued to press this suit on behalf of the State Board of Retirement to recover \$28,600 mistakenly overpaid to a former state employee. The Court granted a restraining order on assets, and attachments on real property, for the amount in controversy.
- **Griffin v. Heck** (Suffolk Superior Court) In this ongoing matter, a former state employee filed a lawsuit against the owner of the office building where she had allegedly become ill. On behalf of the State Board of Retirement, the Attorney General intervened and continues to press a claim for recoupment of some of the disability retirement benefits previously paid to the plaintiff.
- **Commonwealth and City of Easthampton v. William Chicoine** (Hampshire Superior Court) The Attorney General, on behalf of the Department of Agriculture, continued to press a suit to enforce the terms of an Agricultural Preservation Restriction (APR). The defendant had allegedly violated the APR by subdividing the subject parcel into two lots of property.



- **Commonwealth v. Young Dimensions Day Care** (Suffolk Superior Court) On behalf of the Office of Child Care Services (OCCS), the Attorney General recovered nearly \$1 million from a day care provider that allegedly had misappropriated state contract funds. Nearly \$100,000 worth of used vehicles and office equipment were donated to child-serving charities.
- **Commonwealth v. Anderson Nichols** (Worcester Superior Court) Defendant is an architectural firm that allegedly negligently designed a roof for the Glavin Regional Center in Shrewsbury. The matter was settled with the defendant agreeing to pay \$175,000.
- **Commonwealth v. Bettuchi** (Land Court) The Commonwealth filed a complaint to recover possession of state property and to remove a shed erected on state land. The Commonwealth was successful and the shed was removed.

Government Bureau attorneys also litigated cases through the Attorney General's Abandoned Housing Project. The project is designed to assist community groups in choosing and appointing their own people to take over abandoned houses that, due to the absentee owners' indifference, have created a health, safety, and crime hazard for the community. The Attorney General assists the community groups by petitioning the appropriate court for an order that permits the community group to appoint their receiver and take charge of the blighted property, for the benefit of the neighborhood. Once the receiver is appointed, the receiver and the community group work together on the actual repair and rehabilitation of the property.

## **ADMINISTRATIVE LAW DIVISION**

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The Administrative Law Division has four principal functions: (1) to defend lawsuits against state officials and agencies concerning the validity of statutes and regulations and the legality of governmental operations, particularly those seeking injunctive or declaratory relief; (2) to defend suits for judicial review of adjudicatory decisions of state administrative agencies; (3) to undertake a legal review of newly enacted town by-laws; and (4) to prepare legal opinions for constitutional officers, heads of agencies, and certain other officials concerning issues that arise from the performance of their official duties. During Fiscal Year 2004, significant events occurred in each of these areas, as set forth below.

During Fiscal Year 2004, the Administrative Law Division included the following staff members: William Porter, Division Chief; James Arguin; Luna Bacon; Christine Baily; Annapurna Balakrishna; Dena Barisano; Thomas Barnico; John Bowman; Erin Browne; Romeo Camba; Judith Cassino; Victoria Cole; Julie Collins; Pierce Cray; Daniel Hammond; John Hitt; Diana Leeman; Quinette Littleton;

Bernadette Lovell; Maite Macdonald; Pauline O'Brien; Susan Paulson; Anthony Penski; William Porter; Ann Preston; Christopher Quaye; Robert Quinan; William Reynolds; Juliana Rice; Deirdre Roney; Adam Simms; Ginny Sinkel; Amy Spector; Steven Thomas; Rami Vanegas; Jane Willoughby; and Sheila York.

## SIGNIFICANT CASE SUMMARIES

Highlights of some of the most significant cases handled by the Administrative Law Division in Fiscal Year 2004, grouped by subject matter, are as follows:

### CHILDREN AND FAMILIES

- **Covell v. Department of Social Services** (Supreme Judicial Court) The court set aside the Appeals Court's decision, reversing the department's conclusion that there was reasonable cause to support allegations of sexual abuse of a teenage girl by her stepfather. The court held that: (1) the department was required to have only "reasonable cause" to support the report of sexual abuse; (2) the stepfather's failure to submit a transcript of the administrative hearing precluded him from challenging the sufficiency of the evidence; and (3) even if the stepfather was not precluded from challenging the sufficiency of the evidence, the hearing officer had a sound basis for affirming the support determination.
- **Lindsay v. Department of Social Services** (Supreme Judicial Court) In this case arising from a supported report of neglect against a child-care provider for leaving a toddler alone in a locked car for several hours in the summer, the court rejected the provider's argument that a determination of "neglect" must be predicated upon a finding of actual injury to the child, and affirmed the department's conclusion that reasonable cause existed to believe that the provider had neglected the toddler, even though the toddler appeared to have suffered no physical or emotional injury as a result of the incident.
- **Department of Revenue v. Mason M.** (Supreme Judicial Court) The Court reversed an order of dismissal by the trial court and reinstated the department's complaint to increase the defendant-father's child support obligation. The Court concluded that the father's obligations to support the two children that were the product of his intact marriage did not minimize his obligation to the non-marital child that was the subject of the department's complaint.

- **Adoption of Saul** (Appeals Court) In upholding a termination of parental rights, the court held that notations in the mother's medical records of her psychiatric diagnosis were not privileged psychotherapist-patient communications.
- **Adoption of Nancy** (Appeals Court) Although the court agreed that the appellant-father was an unfit parent, it reversed the Juvenile Court's decree, terminating his parental rights on the grounds that termination was not in the best interest of the 11-year-old child, who specifically objected to being adopted, or of her 10-year-old sister, who was in a residential placement and not sufficiently stable to be a candidate for adoption in the foreseeable future.
- **Adoption of Scott** (Appeals Court) The court affirmed a trial court ruling that, once the mother's parental rights were terminated by judicial decree, she lacked standing to bring motions concerning changes in her son's adoption plan.

#### CONSTITUTIONAL LAW

- **Goodridge v. Department of Public Health** (Supreme Judicial Court) Seven same-sex couples challenged, on state statutory and constitutional grounds, the denial of their marriage license applications. The court rejected the statutory challenge, but held, on state constitutional equal protection and due process grounds, that there is no rational basis for excluding same-sex couples from the benefits, protections, and obligations of civil marriage. The court stayed the entry of judgment for 180 days to permit the Legislature to take such action as it might deem appropriate in light of the opinion. Three justices dissented.
- **Largess v. Supreme Judicial Court** (U.S. District Court and U.S. Court of Appeals, First Circuit) Plaintiffs claimed that the Supreme Judicial Court's decision in Goodridge violated the separation of powers and other provisions of the state constitution, and thus violated the federal Constitution's guarantee of a "republican form of government." Plaintiffs' request for a preliminary injunction against implementation of Goodridge was denied, and plaintiffs appealed. The First Circuit affirmed, holding that the republican form of government was intact because the people of Massachusetts still retained ultimate control over all three branches of their government, including through a constitutional amendment process that was under way and could alter the effect of Goodridge in accordance with the people's wishes.
- **Massachusetts Citizens for Marriage v. Secretary of the Commonwealth** (Supreme Judicial Court) Plaintiffs, as supporters of an initiative petition for a constitutional amendment concerning marriage, argued that the Secretary was constitutionally required to transmit the proposed amendment to the 2003 to 2004 Legislature for its action, as the second Legislature

to consider the proposed amendment, even though the 2001 to 2002 Legislature's joint session had adjourned without voting on whether to approve the amendment. The court held that the Secretary had no duty to transmit the proposed amendment to the 2003 to 2004 Legislature, and that there was no judicial remedy available for the inaction of the 2001 to 2002 Legislature.

- **McGuire v. Reilly** (U.S. District Court) The plaintiffs, who engage in "sidewalk counseling" outside facilities where abortions are performed, challenged a state law that provides for a six-foot "buffer zone" around persons entering reproductive health care facilities, within which others may not (without consent) enter "to engage in oral protest, education, or counseling." In earlier proceedings, the First Circuit held that the law does not, on its face, violate the First Amendment. On remand, the district court rejected the plaintiffs' claim that, as applied, the law discriminates against the plaintiffs' viewpoint. The court held that the law's exemption for clinic employees did not allow them to engage in preferential pro-choice advocacy, in view of a limiting interpretation of the law advanced by the Attorney General and followed by local law enforcement authorities.

## ELECTIONS

- **Wheatley v. Secretary of the Commonwealth** (Supreme Judicial Court) An unsuccessful candidate for the state House of Representatives filed suit, alleging irregularities by local election officials. After the Superior Court ordered the Secretary to conduct a new election, the House, in its constitutional role as "the judge of the returns, elections, and qualifications of its own members," held a hearing and then voted to seat the victorious opposing candidate. The Supreme Judicial Court held that the Secretary was entitled to relief from the order for a new election, because the House's decision to seat the opposing candidate rendered moot the result of any new election.
- **Wyler v. Secretary of the Commonwealth** (Supreme Judicial Court) Voters sought to enjoin the holding of a special election to fill a vacancy created by a resignation from the state Senate. The Senate's order, calling the special election, was adopted before the effective date of the resignation, and the special election coincided with a presidential primary in which one party had an uncontested race for the party's presidential nomination while the other party had a hotly contested race. The Court held that the Senate had lawfully acted to call a special election to fill a vacancy certain to occur, where the election itself would not be held until after the vacancy actually occurred, and that there was no proof that the timing of the special election, to coincide with the presidential primary, would so unequally affect turnout as to violate the state constitutional guarantee of an equal right to elect public officials.

- **Sholley v. Secretary of the Commonwealth** (Appeals Court) State statute mandates that candidates for state office disclose on their nomination papers their “residence, with street and number thereof, if any.” The court agreed with the Secretary that the statute requires candidates to include on their nomination papers sufficient information to identify their city or town of residence — not just their street name and house number.
- **Boyette v. Secretary of the Commonwealth** (U.S. District Court) The court granted the Commonwealth’s motion for summary judgment in this action by the proponents of an initiative petition seeking to amend the state Constitution to permit the state or political subdivisions to provide financial assistance to students attending private schools, “regardless of any religious affiliation or character of such institutions.” In 1999, the Attorney General declined to certify the petition because it addressed two subject areas excluded from the state Constitution’s initiative process: the Anti-Aid Amendment and religious institutions. The court held that excluding these subjects from direct popular lawmaking does not violate plaintiffs’ rights under the federal free speech, free exercise, or equal protection clauses.

#### EMPLOYMENT AND RETIREMENT

- **Stonehill College vs. Massachusetts Commission Against Discrimination** (Supreme Judicial Court) Partially overruling its decision in Lavelle v. MCAD, the court held that respondents found by the Commission to have committed employment discrimination in violation of G.L. c. 151B are entitled to judicial review of that decision under G.L. c. 30A, but not to a jury trial. The court also reaffirmed its decision in Dalis v. Buyer Advertising, which held that Art. 15 of the state Declaration of Rights guarantees a jury trial to plaintiffs that file sex discrimination claims in the Superior Court pursuant to G.L. c. 151B, § 9.
- **Boston Retirement Board v. Contributory Retirement Appeal Board (CRAB) and Public Employee Retirement Administration Commission (PERAC)** (Supreme Judicial Court) The court agreed with PERAC and CRAB that the Boston Retirement Board was required to recover overpaid pension benefits that should have been offset against “earned income” in the form of distribution of corporate profits to the retiree, a salaried shareholder-employee of the corporation. The court affirmed PERAC’s interpretation of “earned income” to include such a distribution.
- **Burns v. Civil Service Commission and Department of Revenue** (Appeals Court) The court affirmed the Commission’s decision refusing to vacate all provisional appointments to a particular tax examiner position occurring during a certain period and refusing to appoint plaintiff to one of the positions retroactively.

- **Pulsone and Leary v. PERAC** (companion cases) (Appeals Court) Pulsone and Leary each sought reinstatement from disability retirement, but failed to obtain unanimous reinstatement recommendations from their respective medical panels. In Pulsone, the court upheld PERAC's decision denying reinstatement, because Pulsone had sought reinstatement after PERAC had promulgated its regulation explicitly requiring unanimity — a regulation that was ratified by the Legislature. In Leary, the court reversed the decision denying reinstatement, because PERAC's regulation requiring unanimity had not yet been promulgated.
- **City of Boston v. Deputy Director of Employment & Training** (Appeals Court) The court reversed the grant of unemployment benefits to a police officer who was fired for smoking marijuana while under drug-related suspension. The court held that the officer was barred from receiving benefits because his discharge was “attributable to deliberate misconduct in willful disregard of the employing unit's interest, or to a knowing violation of a reasonable and uniformly enforced rule or policy of the employer.”

#### EDUCATION AND HEALTH CARE

- **Long Term Care Pharmacy Alliance v. Ferguson** (U.S. Court of Appeals, First Circuit) The plaintiffs, pharmacies that serve nursing-home residents, sued the Division of Health Care Finance and Policy, challenging regulations reducing certain Medicaid payments as contrary to federal Medicaid law. The District Court preliminarily enjoined implementation of the rate cuts, but the First Circuit reversed, holding that the pharmacies had no private right of action to enforce the so-called “equal access” provision of the federal Medicaid law. The First Circuit further held that the procedural requirements for rate changes for “nursing facility services” did not apply to the pharmacies.
- **Boston Regional Medical Center, Inc. v. Division of Health Care Finance and Policy** (U.S. Court of Appeals, First Circuit) In this case of first impression, the court held that the debtor hospital's \$1.8 million in unpaid obligations to the Massachusetts Uncompensated Care Pool were properly considered “excise taxes” and thus were entitled to priority treatment in the underlying bankruptcy proceedings.
- **Student No. 9 v. Board of Education** (Supreme Judicial Court) The court upheld the Board's requirement that seniors in the Class of 2003 and thereafter, demonstrate competency in math and English prior to graduating, most commonly by passing a written test administered under the Massachusetts Comprehensive Assessment System (MCAS). The court specifically upheld the Board's authority under the Education Reform Act to implement the graduation requirement in phases, with English and math coming first. It also rejected a claim that the

Board's substantial reliance upon the written MCAS exam violated the Act's provision that the Board use a "variety of assessment instruments."

- **Centennial Healthcare Investment Corp. v. Commissioner of the Division of Medical Assistance (DMA)** (Appeals Court) The Appeals Court agreed that medical providers do not have standing to challenge the denial of their own patients' Medicaid eligibility. The Court also affirmed some \$50,000 in DMA-imposed sanctions for the appellant's persistent refusal to refund, as required by law, the difference between the higher fee paid by private-pay patients, and the lower Medicaid fee that a provider is bound by law and contract to accept once patients are declared Medicaid-eligible.
- **Hancock v. Commissioner of Education** (Suffolk Superior Court) After a lengthy trial, the court recommended that the Supreme Judicial Court rule that the Commonwealth is failing to educate children in the public schools as required by Part II, c. 5, § 2 of the Massachusetts Constitution, and order the state defendants to (1) determine the cost of implementing the seven "curriculum frameworks"; (2) determine the cost of implementing measures to improve local districts' effectiveness; and (3) implement funding and administrative changes resulting from these determinations. The court recommended that the Supreme Judicial Court require inclusion of special education, implementation of all seven curriculum frameworks, "adequate" school facilities, and universal preschool for low-income three- and four-year-olds in the cost determinations, and consider requiring the inclusion of other items such as teacher salary increases, class size reduction, provisions for school libraries, and remedial programs.

#### SECURITIES

- **Silvia v. Secretary of State, Securities Division** (Appeals Court) The court upheld a Securities Division ruling that the appellant (a lawyer) had violated securities laws by selling unregistered securities, by selling them without being licensed to do so, and by making material misrepresentations to buyers in connection with the sales. The central substantive issue was whether the instruments at issue were, in fact, "securities." In concluding that they were, the court adopted the test set forth by the Supreme Court in Reves v. Ernst & Young.

#### TAXATION

- **General Mills, Inc. v. Commissioner of Revenue** (United States Supreme Court) The Court denied General Mills' petition for a writ of certiorari to review a Supreme Judicial Court decision upholding the Commissioner's assessment of income tax on Talbots, Inc., a former subsidiary of General Mills. General Mills alleged that the Commissioner had imposed an extraterritorial tax in violation of the due process and commerce clauses.



- **Peterson v. Commissioner of Revenue** (Supreme Judicial Court) The court held that the mid-year effective date in a July 2002 act amending the capital gains tax statute, violates the “uniformity” clause of the state Constitution. The court remanded the case to the single justice to determine whether the Legislature would have intended to impose the new tax rate beginning on January 1, 2003, which would result in the loss to the Commonwealth of approximately \$250 million, or January 1, 2002, which would subject many taxpayers to additional tax.
- **Alcoa, Inc. v. Commissioner of Revenue** (Supreme Judicial Court) The court upheld a corporate excise tax on Alcoa, rejecting its claim under federal law that it was immune from tax because its activities in Massachusetts did not exceed the solicitation of sales.
- **W.R. Grace & Co. v. Commissioner of Revenue** (Appeals Court) The court partially granted the Commissioner’s appeal by vacating the decision of the Appellate Tax Board and remanding the case for further findings on whether W.R. Grace, and certain of its subsidiaries, constituted a “unitary enterprise,” such that the Commonwealth could tax W.R. Grace on proceeds from the sale of those subsidiaries without engaging in impermissible taxation of extraterritorially derived income. The court affirmed the Board’s decision that W.R. Grace, and certain other of its subsidiaries, did not constitute a “unitary enterprise,” and so the Commonwealth could not tax proceeds from the sale of those subsidiaries.
- **GE Capital Mortgage Services, Inc. v. Estate of Hilda Lugo** (U.S. District Court) The court dismissed the Commonwealth from this interpleader action, which was removed by the United States and involves claims by the IRS and the state Department of Revenue to surplus funds from the foreclosure of a mortgage and the sale of real estate. The court declined to dismiss the action in its entirety, rejecting the Commonwealth’s argument that it is an indispensable party whose joinder is not possible because of its sovereign immunity from suit.

#### PUBLIC SAFETY

- **Modified Motorcycle Ass’n v. Commonwealth** (Appeals Court) The court rejected a suit by a motorcyclists’ association contending that the Commonwealth’s motorcycle-helmet law size specifications were preempted by a federal regulation setting forth different specifications. The court reasoned that helmets complying with the federal regulation would also comply with state law.

#### INSURANCE

- **Tierney v. John Hancock Mutual Life Insurance Co. and Division of Insurance** (Appeals Court, U.S. Supreme Court) The Appeals Court concluded that the Commissioner of Insurance



had properly exercised her discretion in approving John Hancock's plan to convert from a privately-held mutual insurance company to a publicly-traded stock company. In so doing, the court affirmed the Commissioner's determination that members received appropriate compensation for their membership interests and were not entitled to a distribution of assets, and it concluded that in doing so the Commissioner was free to accept the company's valuation. The Supreme Court denied certiorari.

- **Given v. Commerce Insurance Co.** (Supreme Judicial Court) The court held that an insured, filing an auto-body damage claim under a standard Massachusetts auto insurance policy, although entitled to recover the cost of repairs, was not also entitled to recover the "inherent diminished value" of her car, i.e., the decline in the car's resale value that resulted from its having been in an accident. The court also found no procedural problems with an advisory opinion written by the general counsel of the Division of Insurance at the request of Commerce Insurance, and indeed reached the same result as that advisory opinion. The Attorney General filed an *amicus curiae* brief on behalf of the Commissioner of Insurance, advocating the result that the court ultimately reached.

#### UTILITIES AND TELECOMMUNICATIONS

- **Nextel v. Town of Hanson** (U.S. District Court) The court affirmed, under the Federal Telecommunications Act, a decision of the State Building Code Appeals Board denying a building permit for a roof-mounted cell antenna based on the Board's reasonable interpretation of state law regarding whether the structure was a "tower" or an "antenna."
- **Global NAPs, Inc. v. Department of Telecommunications and Energy (DTE) and Verizon** (U.S. District Court) The court affirmed the DTE's decision that Global NAPs, having reached an arbitrated agreement with Verizon regarding charges for use of Verizon's telecommunications network, could not "opt in" to a more favorable agreement between Verizon and another carrier.
- **MCI & Global NAPs, Inc. v. Department of Telecommunications and Energy** (Supreme Judicial Court) The court affirmed a series of seven DTE decisions holding, in substance, that dial-up Internet calls placed to an Internet service provider were not "local traffic," within the meaning of the Federal Telecommunications Act of 1996, and thus that a contract between the appellants and Verizon of Massachusetts did not require Verizon to compensate the appellants for completing such calls. In so deciding, the court declined to follow the U.S. Court of Appeals for the District of Columbia Circuit, and a majority of state courts, to opine on the question.

- **Fitchburg Gas & Electric Light Co. v. Department of Telecommunications and Energy** (Supreme Judicial Court) The court upheld the statutory authority of DTE to rectify a public utility's 11-year overcharge of its customers by ordering the utility to refund the overcharge over a comparable 11-year period through a reduction in future years' charges. The court rejected the utility's argument that such a remedy would constitute impermissible retroactive ratemaking.
- **Franklin W. Olin College of Engineering v. Department of Telecommunications and Energy** (Supreme Judicial Court) The court affirmed a DTE decision declining to permit the college, an electricity customer, to obtain electricity from another city. The Court ruled that DTE could properly define the statutory term "geographic area" to encompass the entire municipality in which an electricity distribution company operates, and that DTE did not abuse its discretion in declining to grant the customer an exception that would allow it to purchase power from another company.

#### GOVERNMENT BENEFITS

- **Wilson v. Commissioner of Transitional Assistance** (Supreme Judicial Court) On appeal from a preliminary injunction barring the Commissioner from reducing benefit payment levels in the Emergency Aid to the Elderly, Disabled and Children (EAEDC) program, the court vacated the injunction and affirmed the Commissioner's authority to implement the cost savings measures he deemed necessary to keep the program's full-year spending within the existing appropriation. The court held that, under the line item at issue, the Commissioner's sole obligation was to provide the Legislature with advance notice of the benefit reduction, and that the Commissioner need not first seek a supplemental appropriation to close the projected deficit. The court noted that, although the hardship to individual EAEDC recipients would be severe, it did not outweigh the Commissioner's lawful action in attempting to control program spending.

#### ENVIRONMENT

- **Sierra Club v. Commissioner of the Department of Environmental Management** (Supreme Judicial Court) The court vacated a trial court order that had permanently enjoined the Commissioner from allowing ski-trail development and trail work within the Wachusett Mountain ski area. In doing so, the court: (1) determined that the Commissioner's approval was regulatory (not adjudicatory) in nature and thus was reviewed properly for whether it had a rational basis rather than whether substantial evidence supported it; (2) rejected the claim that the Commissioner lacked authority to approve the ski-area expansion; and (3) concluded

that the Commissioner's approval conformed with legal requirements and was neither arbitrary nor capricious.

#### LOTTERY

- **Jacobs v. State Lottery Commission** (Appeals Court) The court rejected a lottery-ticket purchaser's claim that errors in advertising materials entitled him to a \$4 million prize instead of a \$10 prize. The court concluded that the language on the ticket, not the advertising materials, was controlling, because the evidence did not show that the ticket purchaser had relied on the advertising materials. The court thus did not reach the issue of whether erroneous advertising materials actually relied upon by a purchaser might have bound the Commission.

#### PROFESSIONAL LICENSURE

- **Ramirez v. Board of Registration in Medicine** (Supreme Judicial Court) The court held that the petitioner was subject to reciprocal discipline in Massachusetts after he entered into a consent discipline order with the Connecticut Department of Public Health. He did not admit wrongdoing, but agreed not to contest certain factual allegations that, the court found, would have constituted grounds for discipline in Massachusetts.
- **Baldi v. Supreme Judicial Court for Suffolk County and Board of Bar Examiners** (U.S. District Court) The court dismissed a complaint to compel admission to the Massachusetts bar, where plaintiff had passed the bar exam, but his application had not been forwarded to the Supreme Judicial Court pending the Board's investigation into his character.
- **Johnson v. Board of Bar Overseers (BBO)** (U.S. District Court) The court dismissed plaintiff's challenge to an ongoing BBO disciplinary proceeding, citing the Younger abstention doctrine, under which federal courts decline to interfere with certain state proceedings.

### STATISTICAL SUMMARY

During Fiscal Year 2004, the Administrative Law Division opened 1,185 cases, and closed 1,090 cases. At the close of the fiscal year, 1,712 cases were pending in the division. Cases handled by the division resulted in 19 reported decisions of the Supreme Judicial Court, 13 reported decisions of the Massachusetts Appeals Court, four reported decisions of the United States Court of Appeals for the First Circuit, and five reported decisions of the United States District Court for the District of Massachusetts. In addition, division attorneys were involved in numerous cases in those courts and in state trial courts that resulted in unpublished decisions.

## MUNICIPAL LAW UNIT

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The Administrative Law Division's Municipal Law Unit discharges the Attorney General's responsibility of reviewing and approving municipal by-laws and by-law amendments from the more than 300 towns throughout the Commonwealth. By statute, the Attorney General is charged with the review of town general by-laws (G.L. c. 40, § 32), town zoning by-laws (G.L. c. 40A, § 5), town historical district by-laws (G.L. c. 40C), and city and town Home Rule Charter amendments (G.L. c. 43B).

During Fiscal Year 2004, the Municipal Law Unit included the following staff members: Robert Ritchie, Director; Sandra Giordano; Kelli Gunagan; and Eva Wanat.

With respect to town by-laws, the Attorney General exercises a limited power to disapprove local legislative action if the proposed amendment is found to be inconsistent with the laws or the Constitution of the Commonwealth. The Attorney General has 90 days from the date on which he receives by-law amendments from the Town Clerk in which to conduct his review. He will disapprove any amendment, or appropriate portion thereof, where the amendment is in facial conflict with substantive state law or where mandatory procedural requirements of adoption are not met.

With respect to Home Rule Charter amendments, G.L. c. 43B prescribes that municipal charters and charter amendments from any of the 351 cities and towns in the Commonwealth must be reviewed by the Attorney General, who must render his opinion on consistency with state law within 28 days after receipt of a proposed charter amendment. The Attorney General is not required to review municipal charters or charter amendments enacted by the Legislature in special acts.

During Fiscal Year 2004, the Municipal Law Unit reviewed (a) 708 general by-laws, of which 632 (89.3%) were approved, 40 (5.6%) were approved with partial deletion, four (0.1%) were disapproved, 14 (2.0%) were returned with a finding that no action by the Attorney General was required by state law, and 18 (2.5%) received cautions; (b) 929 zoning by-laws, of which 850 (91.5%) were approved (including all 178 that included zoning map amendments), 41 (4.4%) were approved with partial deletion, seven (0.1%) were disapproved, 11 (1.2%) were returned with a finding that no action by the Attorney General was required by state law, and 19 (2%) received cautions; (c) 10 historic district by-laws, of which all but one were approved (90%); and (d) 15 charter amendments, of which all but two were found to be consistent with state law (86.7%).

During Fiscal Year 2004, the authority conferred by Chapter 299 of the Acts of 2000 was exercised in 22 instances, a decrease of 43 from the previous year. In all instances, no objection was filed to the Attorney General's waiver of minor procedural deficiencies.

Above and beyond what is required by statute, by choice the Attorney General has extended the services and resources of his Municipal Law Unit by providing, time permitting, voluntary informal review of proposed town by-law amendments and—even though not subject to review by the Attorney General—proposed city ordinances. During Fiscal Year 2004, the unit continued to experience an increase in the number of calls from local public officials and members of the general public, many of which relate to anticipated changes in local laws and charters.

During Fiscal Year 2004, the unit monitored a number of cases in litigation that involved municipal law issues. Even where the Attorney General has initially elected not to intervene or otherwise participate in such cases, the unit monitors developments so that the Attorney General may become involved if warranted by developments in the case. At the close of Fiscal Year 2004, unit attorneys were monitoring approximately 65 such matters, a slight increase over the previous year.

The most prevalent subjects of local regulation during Fiscal Year 2004, were by-laws regulating affordable housing, telecommunications facilities, wetlands, open space, agricultural uses and structures, sexually oriented businesses, and motor scooters. Inclusionary zoning by-laws were more prevalent this year than previously.

Over time, unit personnel have gradually increased the unit's outreach efforts by writing and speaking to groups all around the Commonwealth. Particular emphasis has been placed on working with town clerks and local planning boards, as both are intimately involved in the substance and procedure of local legislation. Unit personnel participated in dozens of outreach and educational events during Fiscal 2003.

The publications "Submitting By-laws to the Attorney General's Office: A Guidebook for Town Clerks and Planning Boards" and "The Guidebook for Adopting Zoning By-laws" were both completely revised for the first time since 2000, and then presented and explained at the town clerks' conferences and meetings. Unit personnel attended the Massachusetts Town Clerks' conferences to hold classes and to present and explain the necessity of the changes in the books used for submitting the by-law packets. Unit personnel also actively participated in events held by the City Solicitors and Town Counsel Association in order to exchange perspectives on issues of mutual interest and concern.

## OPINIONS

The Attorney General is authorized by G.L. c. 12, §§ 3, 6, and 9 to render formal opinions and legal advice to constitutional officers, agencies and departments, district attorneys, and branches and

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committees of the Legislature. Formal published opinions are given primarily to the heads of state agencies and departments. In limited circumstances, less formal legal advice and consultation are also available from the opinions coordinator, as is information about the informal consultation process. The questions considered in legal opinions must have an immediate concrete relation to the official duties of the state agency or officer requesting the opinion. Hypothetical or abstract questions, or questions that ask generally about the meaning of a particular statute, lacking a factual underpinning, are not answered.

Formal opinions are not offered on questions raising legal issues that are the subject of pending or likely litigation or that concern ongoing collective bargaining. Questions relating to the wisdom of legislation or administrative or executive policies are not addressed. Generally, formal opinions will not be issued regarding the interpretation of federal statutes or the constitutionality of enacted legislation. Formal opinion requests from state agencies that report to a cabinet or executive office must first be sent to the appropriate secretary for his or her consideration. If the secretary believes the question raised is one that requires resolution by the Attorney General, the secretary then makes or approves the opinion request. During Fiscal Year 2004, no formal opinions were issued. During the same time period, the Attorney General issued 28 letters providing informal advice, providing a certification or designation to a federal agency in connection with the Commonwealth's participation in a federal program, or declining to give advice.

## TRIAL DIVISION

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The Trial Division is responsible for defending the Commonwealth in civil cases brought against the Commonwealth and its departments, agencies, and employees in a variety of actions primarily consisting of tort, eminent domain, employment, contract, civil rights, and land registration actions. Members of the division analyze each case at the outset to see if the case should be resolved through settlement, or in favor of the Commonwealth by dispositive motion. If not, the case proceeds through the discovery phase, and the division continues to try to resolve the case through settlement or by filing a summary judgment motion. Alternative dispute resolution approaches are always considered and are utilized at any appropriate stage of the case. The experience of the Trial Division in representing the Commonwealth in civil lawsuits is consistent with private practitioners in this area of law in that the majority of cases resolve prior to a trial. If the case goes to trial, the Trial Division aggressively defends the Commonwealth and its employees. The Trial Division also handles any appeals arising from its cases, whether brought in state or federal court. Several appeal decisions are highlighted below. The Trial Division has enjoyed impressive results by defending the Commonwealth and its employees in its trials, resulting in millions of dollars in savings to the Commonwealth and the public.

The following personnel served in the Trial Division during Fiscal Year 2004: Rosemary Connolly, Chief; Ernest Sarason, Managing Attorney and Affirmative Litigation Coordinator; Asha Awad; Jason Barshak; Matthew Berge; Crispin Birnbaum; John Bowen; Ranjana Burke; Joseph Callanan; Stephen Clark; Renee Coleman; Cathleen Collins; Stephen Dick; Thomas DiGangi; Janet Elwell; Lisa Fauth; Susan Gaeta; Norine Gannon; Salvatore Giorlandino; Franco GoBourne; Mary Hall; Sarah Joss; Michelle Kaczynski; Ronald Kehoe; Jennifer Lespinasse; Lucinda MacDonald; Howard Meshnick; Janet Nolan; Ann Marie Noonan; Sally Ogine-Noel; Alicia Oladayiye; Mary O'Neil; Maite Parsi; Fran Riggio; Peter Russell; A. Tom Smith; David Stanhill; Mark Sutliff; James Sweeney; Marini Torres-Benson; Theresa Walsh; Doris White; Jessica Wielgus; Meredith Wilson; Nathanael Wright; and Charles Wyzanski.

### TORTS

Most of the trials conducted by members of the Trial Division involve claims that the Commonwealth or one of its employees breached a duty of care owed to a member of the public, resulting in injury or property damage. The following cases are typical of the tort cases tried by members of the division during the course of the year.

- **Hernandez v. Office of the Medical Examiner** (Suffolk Superior Court) The plaintiff alleged that the Commonwealth's employee negligently drove through a red light, causing an auto accident. The Commonwealth argued that it was, in fact, the plaintiff who had driven through a red light. The jury returned a verdict for the Commonwealth after a three-day trial.
- **DiBenedetto v. Commonwealth** (Suffolk Superior Court) The plaintiff claimed that a Department of Correction (DOC) employee caused an automobile accident that resulted in plaintiff sustaining personal injuries and property damage to her car. After a two-day trial, the jury found no negligence on the part of the DOC employee, and returned a verdict for the Commonwealth.
- **Rice v. Metropolitan District Commission, Sail Boston 2000, and Conventures** (Suffolk Superior Court) Rice slipped and fell on the rampart on top of Fort Independence on Castle Island while watching the Parade of Sail during Sail Boston 2000. The Commonwealth moved for summary judgment based upon the recreational use statute, which the court denied. After a three-day trial, the jury returned a verdict for the Commonwealth.
- **Gibau & Ogara v. Commonwealth of Mass.** (Suffolk Superior Court) The plaintiffs claimed that they were injured as a result of an accident with a state police cruiser. The central dispute at trial was the amount of damages; plaintiffs' pretrial demand was \$38,000, but after trial the jury returned a verdict of \$33,700.



- **Taylor v. Commonwealth** (Suffolk Superior Court) The plaintiff, while being held in a Suffolk jail cell awaiting arraignment, caught his fingers in the sliding cell door. Plaintiff claimed that court employees failed to take adequate precautions when closing the cell door and to provide him with an adequate warning. After a three-day trial, the jury found for the plaintiff and awarded him \$20,000 in damages.
- **Henderson v. Executive Office of Health and Human Services** (Suffolk Superior Court) A pedestrian claimed that a van driven by a Department of Mental Retardation worker struck him and knocked him down, resulting in a long convalescence, over \$54,000 in medical bills, substantial pain and suffering, and permanent injury. The jury awarded the plaintiff \$160,000 in damages, but also found the plaintiff 30% comparatively negligent, thus reducing the verdict to \$112,000. The court then further reduced the verdict to the \$100,000 cap imposed by the Massachusetts Tort Claims Act.

Many of the tort cases are also resolved through other means, such as dispositive motions or settlement. The following cases are examples of resolutions achieved through those means:

- **Allen v. Department of Social Services (DSS)** (Suffolk Superior Court) The plaintiff, the biological mother, and her minor son, sued DSS and his foster family for negligence, claiming that the minor son was physically and sexually assaulted by the foster parents' son while in the foster home. The deposition testimony did not support the plaintiff's allegations in her pleadings. Upon the Commonwealth's motion the court dismissed the complaint as to all defendants.
- **Haygood v. Registry of Motor Vehicles (RMV)** (Suffolk Superior Court) The plaintiff claimed that he slipped and fell in a stairway at the Registry's former facility on Nashua Street. The plaintiff alleged that the RMV should have been aware of the defective condition in the stairway. Discovery did not reveal that anyone had observed any defect, nor was there any witness to the fall. On the day that the trial was to begin, the court dismissed the case.
- **Dumont v. Massachusetts Highway Department** (Bristol Superior Court) The plaintiff was injured in an auto accident on a state highway that was under construction. The parties disputed whether the claim was governed by the state tort claims act (with its \$100,000 damages cap and its two-year presentment requirement) or the road defect statute (with its \$5000 damages cap and 30-day notice requirement). The court agreed with the Commonwealth that this was a road defect claim and thus allowed the Commonwealth's motion for summary judgment.
- **Labonte v. Ness and Commonwealth** (Norfolk Superior Court) The plaintiff claimed that the Commonwealth's failure to "maintain" a rotting tree on public property Route 1A in



Wrentham constituted a public nuisance because it set the stage for a chain of events leading to an auto accident. Ness, the co-defendant, claimed that when the rotting tree fell and rolled in front of her car, she swerved and struck the plaintiff's vehicle. There was no claim of negligence against the Commonwealth, only a "public nuisance" claim. Because the Commonwealth has not waived its sovereign immunity to claims for public nuisance, the court allowed the Commonwealth's motion to dismiss.

- **Moore v. Department of Social Services (DSS)** (U.S. District Court) A physically and mentally challenged 6-year-old, who had been placed in DSS custody, fell down the stairs at a residential facility. The court allowed the Commonwealth's motion to dismiss based on the Commonwealth's immunities under the state tort claims act.
- **MacDonald v. Prive** (Barnstable Superior Court) In this dispute over the ownership of a \$4 million instant lottery ticket, the plaintiffs claimed that one of them was the true ticket owner, not the private co-defendants who had submitted a claim to the Lottery for the prize, and that the Lottery negligently paid the wrong person. On the Lottery's motion, the trial court bifurcated the trial so as to initially try only the claims between the competing private claimants, reserving for a second trial any remaining claims that the Lottery paid the wrong person.

In Fiscal Year 2004, several tort cases were successfully settled and resulted in significant savings to the Commonwealth. The following cases are typical of the types of settlements reached in tort cases.

- **McDermott v. Massachusetts Criminal Justice Training Council** (Suffolk Superior Court) The plaintiff injured her hand during training exercises at the police academy. The instructor called a "time out" when he realized that the plaintiff had a problem, but the plaintiff claimed negligent supervision during the training and sought damages for lost overtime and emotional distress. Her demand before trial was \$65,000, but on the eve of trial, the Commonwealth negotiated a \$10,000 settlement.
- **LeFevre v. Commonwealth** (Essex Superior Court) The plaintiff claimed he sustained significant back injuries after a fall from a loading dock at the Middlesex Superior Courthouse. The Commonwealth contested liability, arguing that the plaintiff's own negligence, and not the condition of the loading dock, caused his injuries. The plaintiff settled for \$6,500.
- **Pearl v. Commonwealth** (Barnstable Superior Court) The plaintiff's automobile was rear-ended by a vehicle driven by a DMH employee, who was cited for the action. Two lawsuits

resulted: one on behalf of the plaintiff seeking \$100,000 for her personal injuries, and a subrogation claim brought by her insurer to indemnify it for amounts in excess of \$10,000 paid on behalf of its insured for medical and property damages. After mediation, the personal injury claim was settled for \$58,000 and the subrogation claim for \$2,000.

Other tort cases raised legal issues requiring resolution by the appellate courts. Examples of such cases include the following:

- **Sobolowski v. Registry of Motor Vehicles (RMV)** (Appeals Court) The plaintiff sued the RMV for negligent record-keeping regarding the status of his driver's license. Reversing the Superior Court, the Appeals Court ruled that the RMV's negligence in revoking a license was not actionable, because the state tort claims act preserves the Commonwealth's immunity from suits based on licensing functions.
- **Cruthird v. Commonwealth and Three Justices of the Appeals Court** (Appeals Court) The plaintiff was convicted of armed assault with intent to murder, assault and battery by means of a dangerous weapon, and possession of a firearm without a license. The plaintiff's complaint alleged that the judicial defendants, who sat on a panel of the Appeals Court that affirmed the convictions, had acted wantonly, willfully, negligently, and outside of their jurisdiction by affirming the conviction. The trial court granted dismissal based on judicial immunity; the Appeals Court affirmed; and the Supreme Judicial Court denied further appellate review.
- **Andrutis v. Berghaus and State Police** (Appeals Court) The plaintiff appealed from a jury verdict in favor of the Commonwealth entered several years ago involving a fatal car accident caused by a car driven by a trooper. A key dispute was whether the trooper involved was, in fact, acting within the scope of his employment at the time of the accident, only if so, would he be eligible for indemnification from his employer, the State Police. The Appeals Court affirmed the jury verdict, ruling that there was sufficient evidence from which the jury could find that the trooper was not acting within the scope of his employment at the time of the accident.

## CONTRACTS

The division defends the Commonwealth and its agencies in a variety of contract actions consisting of construction disputes, breach of lease cases, and bid protests. Often these cases are complex because they often involve interpretation of bidding regulations and a complicated statutory framework. These cases also frequently require the division to defend requests for preliminary injunctive relief, which may be dispositive of the entire case. Unlike tort cases, there is no statutory cap on the potential exposure to

the Commonwealth, so the Commonwealth's liability exposure can be quite large in any given case. The following are examples of the types of contract cases handled by the division.

- **Brown, Rudnick v. Commonwealth** (Suffolk Superior Court) Lawyers who represented the Commonwealth in its suit against the tobacco industry in the 1990s sought 25% of the money recovered, or to be recovered in perpetuity, by the Commonwealth pursuant to the 1998 national master settlement agreement (MSA) between the states and the tobacco industry. The lawyers sought to recover approximately \$2.1 billion over the next 25 years, with billions more in perpetuity (subject to certain variables and an offset for amounts paid to them directly by the tobacco industry). The jury found that the lawyers were entitled to only 10.5% of what the Commonwealth will receive under the MSA, and only for the first 25 years of the MSA, thus rejecting both the 25% and the perpetuity arguments. The jury award is also subject to an offset for the amounts that the lawyers receive directly from the tobacco industry as attorneys fees pursuant to the MSA. As a result, based upon current projections and subject to certain variables, the attorneys may not be entitled to any additional attorneys fees from the Commonwealth, saving the Commonwealth over \$1 billion in the next 20 years alone.
- **Superior Abatement, Inc. v. IDM Environmental v. Division of Capital Asset Management (DCAM)** (Suffolk Superior Court) The plaintiff submitted a claim for the cost of abating vinyl asbestos floor tiles during demolition of the old Boston State Hospital. The plaintiff argued that the work was not included in the contract specifications and cost an additional \$800,000 to complete. DCAM maintained that the abatement work was included in the specifications and thus in the contract price. The dispute turned on the interpretation of language found in a footnote in the contract. DCAM was able to negotiate a favorable \$135,000 settlement of the claim against it, with the other defendants contributing \$165,000, for a total of \$300,000 on the \$800,000 claim.
- **Midland States Life Ins. Co. v. Cardillo and State Lottery Commission** (Appeals Court) The plaintiff corporations sued to compel the Lottery Commission to transfer lottery winners' payments to the corporations pursuant to agreements whereby the winners had pledged future payments in return for loans. The court agreed with the Lottery Commission that the agreements were impermissible assignments of lottery proceeds in violation of state law.

#### REAL ESTATE

The real estate cases handled by the Trial Division consist primarily of eminent domain cases, along with miscellaneous other types of real property cases. Like contract cases, there is no statutory cap that limits the Commonwealth's exposure to damages in these types of cases. Therefore, the potential

liability in any case can amount to millions of dollars depending on what the jury concludes is the highest and best use for the land taken by the Commonwealth. The following are examples of the types of cases handled in this area and the manner in which they were resolved.

- **Dewey Square v. Massachusetts Highway Department (MHD)** (Suffolk Superior Court) MHD took several easements at One Financial Center for the Big Dig project. The owners claimed that their property suffered a diminution in value of \$14 million, plus interest, due to the easements and the disruption caused by the adjacent construction. After mediation, the parties reached a settlement for \$1.25 million, resulting in a savings of \$12.75 million to the Commonwealth.
- **Magaletta v. Commonwealth** (Norfolk Superior Court) MHD took four adjacent parcels along Route 1A in Westwood, as well as some temporary construction easements, as part of a road improvement project. The combined pro tanto payments for the four parcels exceeded \$290,000. Prior to trial, plaintiff demanded an additional \$325,000, but the Commonwealth negotiated a favorable settlement of \$80,000, resulting in a savings of \$245,000.
- **W&R Realty v. MHD** (Middlesex Superior Court) MHD took a small portion of plaintiff's land located on West Main Street in Hopkinton. The plaintiff demanded \$105,000, but the Commonwealth settled by a payment of \$64,000, for a savings of \$41,000.
- **Drwila v. Comm.** (Plymouth Superior Court) This case concerned the taking of over 55 acres in Kingston for the Route 44 project. At trial, the Commonwealth successfully moved to strike the plaintiff's engineer's testimony. While the pro tanto previously paid to the plaintiff was \$430,000, the jury awarded only \$350,000, which was \$80,000 less than the pro tanto. The plaintiff's pretrial demand was \$1.8 million, but the verdict resulted in the plaintiff owing the Commonwealth \$80,000.
- **Rodman v. Commonwealth** (Norfolk Superior Court) In this eminent domain taking of land on Route 1, the Commonwealth's initial payment to the owners at the time of the taking was \$765,000, but the jury awarded only \$575,000, about \$1.85 million less than what the plaintiffs claimed.

Some real estate matters raised legal issues requiring resolution by the appellate courts. Examples of such cases include the following:

- **Locator Services, Ltd. v. Treasurer** (Superior Court, Appeals Court) The Treasurer moved for summary judgment asserting that G.L. c. 79, § 7D does not require the payment of compound

interest on eminent domain damages awards, and that the plaintiff's compound interest claims on behalf of 55 parties were barred by sovereign immunity. After the Superior Court denied the motion, the Treasurer appealed, and also successfully moved for the Superior Court to report the correctness of its rulings to the Appeals Court. A resolution is expected in Fiscal Year 2005.

- **Boston Water & Sewer Comm'n (BWSC) v. Commonwealth** (Appeals Court) The Legislature took a large parcel of land, claimed by BWSC, for use by the University of Massachusetts at its Harbor campus. BWSC sued, claiming that the Legislature's act was invalid and did not provide the constitutionally required just compensation for the taking. The Superior Court agreed with the Commonwealth that BWSC cannot contest the constitutionality of an act of Legislature, and therefore the judgment entered for the Commonwealth. BWSC has appealed.
- **M.B. Claff, Inc. v. MBTA** (Supreme Judicial Court) In this case challenging the constitutionality of the state law setting the interest rate on eminent domain judgments, the Attorney General filed an amicus brief to inform the court of the complexity of the issue, the difficulties with a judicial resolution, and the desirability of a court decision calling the constitutional question to the Legislature's attention and outlining the constitutional parameters of a solution. The court did not reach the constitutional issue in this case, but, in the companion case of Liberty Square Development Trust v. City of Worcester, issued a decision along the lines suggested in the amicus brief. At the close of Fiscal Year 2004, efforts were continuing to obtain the adoption of legislation that would meet constitutional requirements as outlined by the court.

#### EMPLOYMENT, CIVIL RIGHTS, AND OTHER CASES

Increasingly, the Trial Division is called upon to defend the Commonwealth and its agents in employment and civil rights cases. These cases are factually and legally complex and present challenging issues to the division. Also, because there is no statutory cap on the monetary damages that can be awarded in these cases, and because these types of claims frequently are brought against officials or employees in their individual capacities, the potential financial exposure can be significant. The division handled a number of civil rights cases during Fiscal Year 2004, including the following:

- **Mihos v. Swift** (U.S. Court of Appeals, First Circuit) The court affirmed in part and vacated in part a judgment entered by the U.S. District Court on claims for personal damages against the former Acting Governor brought by a former member of the Massachusetts Turnpike

Authority. The claim for damages arose out of the Acting Governor's attempt to remove the member from the board of the authority. The court remanded the case for further proceedings on the member's claim under the First Amendment.

- **Wilbur v. Department of Social Services (DSS)** (U.S. District Court) A mentally challenged teenager allegedly was raped by an individual in DSS custody. The court granted the Commonwealth's motion to dismiss the tort claims based on Eleventh Amendment immunity, but the civil rights claims against the individual state employees remain.

The Trial Division resolved, by way of trial or otherwise, a number of significant employment cases, including the following:

- **Denton v. Smith** (U.S. District Court and U.S. Court of Appeals, First Circuit) The plaintiff, a former social worker and employee of Health Education Services (HES), brought suit for intentional interference with contractual relations, defamation, and violation of her federal and state civil rights following her suspension from her position at HES. The plaintiff had been accused of having an inappropriate relationship with an emotionally disturbed juvenile. After her dismissal from her employment, the plaintiff brought suit against various DSS and other state agency employees. Following the state Superior Court's decision affirming a DSS Fair Hearing officer's substantiation of a claim of abuse/neglect by the plaintiff, the federal case was resolved by the plaintiff's stipulation to dismiss with prejudice her claims as to all defendants.
- **Fafel v. Middlesex Sheriff** (U.S. District Court) The court allowed the Sheriff's motion to enforce the plaintiff's acceptance of the Sheriff's offer of judgment. Under this judgment the plaintiff agreed to accept a total of \$150,000 from the Sheriff to satisfy all claims made and relief sought by the plaintiff arising from or related to his April 2000 termination from the Middlesex Sheriff's Office. The court agreed with the Sheriff that the plaintiff's acceptance of the offer of judgment constituted a release of all the plaintiff's claims against the Sheriff arising from the termination, including the plaintiff's claims in two pending state court cases. After an evidentiary hearing, the court rejected the plaintiff's claim that his prior attorney did not have authority to accept the offer of judgment.
- **Romero v. Commissioner of Environmental Protection** (Suffolk Superior Court) The plaintiff, a Department of Environmental Protection (DEP) employee who had been passed over for a management position and subsequently terminated, claimed handicap discrimination based on hearing loss, tinnitus, associated extreme sensitivity to background noise (hyperacusis), and depression. After an eight-day trial and three days of deliberation, the jury agreed with the Commonwealth and returned a defense verdict.

- **Phillips v. Department of Mental Health (DMH)** (Suffolk Superior Court) The plaintiff, employed by DMH as a nurse, claimed that he was fired in retaliation for reporting patient abuse. After trial, the jury found for DMH on all counts.
- **McCord v. Commonwealth** (Suffolk Superior Court) The plaintiff claimed that she was denied pay, promotional opportunities, and training on account of sex-based discrimination by the state Information Technology Division. After trial, judgment entered for the Commonwealth.
- **Collins v. Commonwealth** (Suffolk Superior Court) The plaintiff claimed that he had been discriminated against based on his disability when he was rejected from the State Police Academy. The State Police physician rejected the plaintiff on the grounds that he could not perform safely all of the essential duties of the job. The plaintiff argued that he was a qualified handicapped person because, he claimed, he could perform the job with a reasonable accommodation in the form of protective gear. The court disagreed and entered summary judgment for the Commonwealth, ruling that the plaintiff was not a qualified handicapped person because the “accommodation” required would not be reasonable and there was no reasonable way to protect the plaintiff’s health.
- **Grady v. Department of Environmental Protection** (Suffolk Superior Court). The plaintiff was a non-tenured manager who claimed that he had been terminated in violation of an employee handbook and the public policy exception to the at-will employment doctrine. He further claimed that he was not allowed a hearing to defend himself against defamation as provided by the due process clause. DEP’s motion for summary judgment was allowed.
- **Marone v. DOC** (Suffolk Superior Court) In this handicap discrimination claim against the Department of Correction, the jury found that the DOC, as employer, made all reasonable accommodations for the plaintiff corrections officer, who had a hyper-sensitivity to cigarette smoke, which induced her asthma, leading to her extended leave from work.

Some employment and civil rights cases raised legal issues requiring resolution by the appellate courts. Examples of such cases include:

- **Clancy v. McCabe** (Appeals Court) The plaintiff, a female motorist who had been sexually assaulted by an on-duty state trooper, claimed that the former Commissioner of Public Safety had violated her civil rights by failing to terminate or discipline the trooper more harshly than the six-month suspension that the trooper had received for two prior acts of misconduct involving female motorists. The Commissioner argued that he was entitled to qualified immunity for his



discipline decision. The Appeals Court disagreed. The Supreme Judicial Court, however, granted further review and held that the former Commissioner was entitled to qualified immunity. The only remaining claim against the Commonwealth was for tort liability for its alleged negligent supervision of the trooper.

- **Dasey v. State Police** (U.S. Court of Appeals, First Circuit) The court affirmed the grant of summary judgment to the State Police, who had been sued for dismissing a probationary-status trooper because he lied in his admission application and smoked marijuana before becoming a state trooper. The plaintiff's first civil rights suit, alleging a procedural due process violation, was previously dismissed by the District Court, which dismissal was affirmed by the First Circuit.
- **Ritchie and Cameron v. Department of State Police** (consolidated cases) (Appeals Court) The plaintiffs are State Police troopers who claimed they were subjected to a hostile work environment and retaliated against as a result of complaining about that environment. The State Police's motion to dismiss was granted, but on appeal, the Appeals Court reversed, ruling that there were sufficient facts alleged to make out a claim for retaliation under G.L. c. 151B. The Appeals Court thus did not reach the question whether the plaintiffs could sue for a hostile work environment when none of the alleged conduct was directed at them.

## **STATISTICAL SUMMARY**

During Fiscal Year 2004, the Trial Division opened 256 tort cases and closed 189; opened 32 contract cases and closed 19; opened 32 real estate cases and closed 35; and opened 123 employment and civil rights cases (as well as other miscellaneous types of cases) and closed 97. At the end of Fiscal Year 2004, there were 1,831 open cases in the Trial Division. In Fiscal Year 2004, there have been particular increases in both tort and employment lawsuits as compared to Fiscal Year 2003. The Trial Division is dedicated to effectively and efficiently resolving civil lawsuits to protect and defend the Commonwealth and the public.

## **OUTREACH, EDUCATION, AND TRAINING**

During Fiscal Year 2003, Assistant Attorneys General in the Trial Division participated in a wide range of outreach and training efforts, including serving as faculty in Massachusetts Continuing Legal Education programs, participating in the Citizen Schools Project, and assisting in trial training and moot court programs at various law schools.

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# PUBLIC PROTECTION BUREAU

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CIVIL RIGHTS AND CIVIL LIBERTIES DIVISION  
CONSUMER PROTECTION AND ANTITRUST DIVISION  
ENVIRONMENTAL PROTECTION DIVISION  
INSURANCE DIVISION  
INVESTIGATIONS DIVISION  
MEDIATION SERVICES DIVISION  
DIVISION OF PUBLIC CHARITIES  
UTILITIES DIVISION

## **PUBLIC PROTECTION BUREAU**

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The Public Protection Bureau manages and oversees civil affirmative litigation on behalf of the Commonwealth and its citizens; the development of policy, legislative, and regulatory proposals; and personnel for eight divisions, which include Civil Rights and Civil Liberties, Consumer Protection and Antitrust, Environmental Protection, Insurance, Investigations, Public Charities, Utilities, and Mediation Services. The bureau also includes the Consumer Complaint and Information Section, and oversees the Local Consumer Aid Fund, which provides grants to local community groups to mediate and resolve consumer complaints at the local level.

The bureau develops and coordinates health care policy initiatives to improve the coordination, enhancement, and expansion of current health care policy enforcement efforts. The bureau targets its efforts to preserve access to affordable, high-quality health care that is responsive to the communities' needs.

The bureau oversees Attorney General Reilly's Community Benefits Guidelines for both hospitals and HMOs. Members of the Insurance Division, the Consumer Protection and Antitrust Division, and the Public Charities Division staff the Community Benefits initiative.

The bureau also has an Elder Protection Unit that seeks to enhance protections for Massachusetts elders by improving both the coordination of the Attorney General's outreach efforts and the response to matters involving elder fraud and abuse.

The Public Protection Bureau included Alice Moore, Bureau Chief; David Beck; Charlene Best-Brown; Richard Cole; Kirsten Engel; Nusirat Hassan; Katharine London; Anna Marie Meola; Isabel Silva; and Rose Ursino.

## **CIVIL RIGHTS AND CIVIL LIBERTIES DIVISION**

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The Civil Rights and Civil Liberties Division enforces the Massachusetts Civil Rights Act (MCRA). The MCRA authorizes the Attorney General to seek injunctive relief when threats, intimidation, or coercion based on an individual's race, color, national origin, ethnic background, gender, sexual orientation, disability, age, or religious affiliation interfere with the exercise of that person's civil rights. A violation of a civil rights injunctive order constitutes a criminal offense, punishable by a maximum of 10 years in state prison if the victim suffers bodily injury, or up to two and one half years in a correctional facility if no bodily injury results.

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The division also enforces the fair housing laws, which prohibit discrimination on the basis of race, color, national origin, religion, sex, sexual orientation, familial status, marital status, source of income (receipt of housing subsidy), age, or disability. Division staff also focus on employment discrimination, discrimination in places of public accommodations, and educational equity.

The Disability Rights Project works to increase enforcement of state and federal laws assuring equal access to places of public accommodation like restaurants and stores and access to municipal buildings and services. The project protects the rights of individuals with disabilities not only through litigation, but by providing assistance to individuals, access to training, publications, intervention with municipal entities, and speaking engagements.

The Civil Rights and Civil Liberties Division included Cathy Ziehl, Division Chief; Patricia Correa, Director, Disability Rights Project; Michael Fleischer; Bethany Hyland; Rosalind Kabrhel; Jennifer Keating; Judy Levenson; Maria MacKenzie; Tina Matsuoka; and Daniel Swanson.

## SIGNIFICANT CASE SUMMARIES

### BIAS AGAINST SEXUAL ORIENTATION

- **Commonwealth v. Alevizos** (Suffolk Superior Court) The division obtained a preliminary injunction against James Alevizos after he tried to run over, and then physically assaulted, two men he thought were gay, leaving one victim with a broken jaw.
- **Commonwealth v. Isiah Bass, Brian Belew, Jeffrey Guity, and Teagan Isabelle Simms** (Suffolk Superior Court) The division obtained final judgment against all defendants except Simms after they physically assaulted a gay couple in Boston in 1999 using a baseball bat and a vodka bottle.

### BIAS AGAINST DISABILITY

- **Commonwealth v. Pimental** (Norfolk Superior Court) The division obtained a preliminary injunction against Eleanor Pimental after she threatened, intimidated, and used coercive behavior toward her neighbor, Kelly Doolin, and Ms. Doolin's 11-year-old autistic son, based on the son's disability (using her dog to frighten the boy, calling him "retard" and "animal," and accusing him of bringing down her property values).

EMPLOYMENT DISCRIMINATION

- **Commonwealth v. Bull HN Information Systems, Inc.** (United States District Court) The division, along with the Equal Employment Opportunity Commission (EEOC), settled this age discrimination case on March 4, 2004. The court entered declarations and ordered relief on the Commonwealth's claims alleging that Bull HN, a large electronics company, violated the federal Older Workers' Benefits Protection Act (OWBPA) and the federal Age Discrimination in Employment Act (ADEA) when laying off its workers aged 40 and older. The settlement revived the rights of former employees affected by the layoff to file an age discrimination claim, and required Bull HN to provide those employees with information under the OWBPA so they could assess the merits of such a claim.
- **UNICCO Services Co.** Along with the EEOC and the Massachusetts Commission Against Discrimination (MCAD), the division continued to monitor Unicco's compliance with the June 2002 consent decree arising from allegations of repeated sexual harassment of immigrant female office cleaners.
- **Massachusetts Bay Transportation Authority** The division continued to monitor the MBTA pursuant to an Equal Employment Opportunity Agreement and EEO Compliance Program the Attorney General and MBTA executed on February 6, 1997, in response to long-standing complaints of discrimination, harassment, and retaliation at the MBTA.

EDUCATIONAL EQUITY

- **Comfort et al. v. Lynn School Committee, et al.** (United States District Court) On June 6, 2003, the court issued its decision in this challenge to Lynn's 14-year-old voluntary school desegregation plan and the state's school desegregation law under the federal and state constitutions, finding that the United States Constitution does not prohibit school districts from implementing voluntary plans to desegregate their primary and secondary schools. The court found that, as a result of Lynn's success in integrating its schools, students received the considerable benefits of learning from and with children from other races and ethnic groups, and were better prepared for success in racially and ethnically diverse workplaces and communities. The court also found that racially and ethnically diverse students maintain positive inter-group relations, minimizing tensions and violence in the schools. The federal court also attributed the end of racial isolation and segregation of Lynn's students, and its successful implementation of its integration plan, with Lynn's students' positive academic achievement, performance gains, and improving test scores. The plaintiffs appealed the decision to the First Circuit Court of Appeals. The division filed its brief on May 25, 2004; the First Circuit scheduled arguments to be heard on August 5, 2004.

## HOUSING DISCRIMINATION

The division settled 20 cases, resulting in \$850,000 in monetary relief and affirmative injunctive relief changing the business practices, including equal housing opportunity policies, complaint and investigation procedures, anti-discrimination training, and reporting mechanisms, of landlords, management companies, and rental agents. Through training programs and prosecuting housing discrimination cases, the division also worked to modify landlord and realtor practices, to educate tenants about the right to fair treatment in the housing market, and to increase the availability of safe, affordable housing for families with young children.

- **Commonwealth v. Davis** (Middlesex Superior Court) Allegations of refusal to rent to a recipient of Section 8, this case settled for \$60,000 in damages and prohibitory and injunctive relief.
- **Commonwealth (Leticia Cruz) v. David Johnson, et al.** (Hampden Superior Court) Allegations that the owners of a three-family rental property in Springfield discriminated against a tenant on the basis of familial status and because the apartment may have contained lead, this case settled for \$3,500.
- **Commonwealth v. Estate of Mary Moore** (Suffolk Superior Court) Allegations of familial status and lead paint, this case settled for \$7,500.
- **Commonwealth v. Mary Murnane** (Middlesex Superior Court) Allegations of race and/or color discrimination, this case settled for \$50,000 and general prohibitory relief.
- **Commonwealth and Yolanda Lopez v. Robert Ahearn and Olde Holyoke Development Corporation** (Hampden Superior Court) Allegations of sexual harassment and retaliation by the landlord's property manager, this case settled for \$35,000 and equitable relief.
- **Commonwealth and Thomas v. Hatfield Housing Authority** (Hampden Superior Court) Allegations of disability discrimination resulted in a consent decree establishing procedures and policies for reasonable accommodation and \$12,500 in monetary relief.
- **Commonwealth v. Clarendon Towers/McNeil Management Company** (Suffolk Superior Court) Allegations of intimidation, harassment, discrimination, and retaliation because of race, national origin, and disability were filed against this federally subsidized, 500-unit housing complex and management company, these cases settled by consent decree. The defendants paid substantial monetary damages to complainants, and agreed to make sweeping changes to

its policies and practices to permanently protect tenants and applicants from discrimination and retaliation. An independent monitor will oversee the management and operations until 2010.

- **Commonwealth v. Dolben, et al.** Allegations of refusal to rent to recipients of housing subsidy programs, this case settled for significant injunctive relief applicable to hundreds of affordable units Dolben owned or controlled.
- **Commonwealth v. Raymond Scanzani** (Suffolk Superior Court) Allegations of refusal to rent to recipient of Section 8, this case settled for \$20,000 and injunctive relief.
- **Commonwealth v. Federal Management** (Middlesex Superior Court) Allegations of discrimination against a person with a disability, this case settled for injunctive relief.
- **Commonwealth & Michelle Repollet v. Judy Thompson & Abaladejo Management** (Hampden Superior Court) Allegations of discrimination arising from familial status, this case settled for \$35,000 and injunctive relief.
- **Commonwealth v. Peter Denial** (Worcester Superior Court) Allegations of sexual discrimination and retaliation, this case settled for \$13,000.
- **Commonwealth v. Kaplan** (Essex Superior Court) Allegations of refusal to rent to a Section 8 recipient, this case settled for \$7,500 and injunctive relief.
- **Commonwealth v. EJS Linden Realty and Milan** (Middlesex Superior Court) Allegations of discrimination because of familial status, this case settled for \$3,500 and injunctive relief.
- **Commonwealth v. EJS Linden Realty LLC** (Suffolk Superior Court) Allegations of discrimination of familial status, this case settled for \$3,500 and injunctive relief.
- **Commonwealth v. James Farrell** (Suffolk Superior Court) Allegations of refusal to rent to a Section 8 recipient, this case settled for \$5,000 and injunctive relief.
- **Commonwealth v. Borrelli** (Norfolk Superior Court), based on allegations of discrimination against a person with a disability, this case settled for \$5,000 and injunctive relief.
- **Commonwealth v. Kfoury** (Bristol Superior Court) Allegations of familial status discrimination arising from the presence of lead paint, this case settled for injunctive relief.

- **Commonwealth v. Crown Place** (Plymouth Superior Court) Allegations of disability and Section 8 discrimination, this case settled for \$25,000 and injunctive relief.
- **Commonwealth & Diane Joaquin v. Hebig** (Hampden Superior Court) Allegations of sexual harassment, this case settled for \$4,000.

The division also filed seven new cases referred from the Massachusetts Commission Against Discrimination (MCAD), after the Commission determined that discrimination claims were supported by probable cause and an election for judicial determination was made, as required by the Fair Housing laws.

- **Commonwealth v. Oxford Realty & Lillian Pepi** (Middlesex Superior Court) Allegations of refusal to rent to a recipient of a housing voucher from the Alternative Housing Voucher program, which provides rental assistance to persons with disabilities.
- **Commonwealth v. PJNC, LLC** (Middlesex Superior Court), **Commonwealth v. Lorenn Cullen** (Norfolk Superior Court), and **Commonwealth v. Douglas Williams** (Barnstable Superior Court) Allegations of refusal to rent to a Section 8 recipient.
- **Commonwealth/Derusha v. Correa** (Worcester Superior Court) Allegations of refusal to rent to a Section 8 recipient and lead paint violations.
- **Commonwealth v. Wheel Estates and Morgan Management** (Berkshire Superior Court) Allegations that the owners/operators of a mobile home park refused to make reasonable modifications to the common areas of the park in order to make the pool and pool house accessible.
- **Commonwealth v. Wahconha Grove Street Realty Trust** (Berkshire Superior Court) allegations of racial discrimination against a white tenant who has a bi-racial son and associates with her African-American boyfriend and family members.

#### PUBLIC ACCOMMODATIONS

- **Commonwealth v. Haverhill Country Club** (Appeals Court) The division continued to defend on appeal the October 1999 jury verdict against Haverhill Golf & Country Club (HCC) in this gender discrimination case, and the Suffolk Superior Court's order in January 2000, finding that HCC had engaged in a pattern and practice of gender discrimination against its women members, and entering a permanent injunction ordering HCC to cease discriminating against female members of the club. HCC appealed this verdict and the division filed its brief

on September 20, 2002. The Appeals Court heard oral argument on December 19, 2002, and rendered its decision on June 13, 2003, affirming the trial jury's award of \$1,967,400 and the trial court's order of permanent injunctive relief. On September 5, 2003, the Supreme Judicial Court denied further review.

#### DISABILITY RIGHTS

- **Commonwealth and National Federation of the Blind v. E\*TRADE** The division continued to prosecute its lawsuit filed with the MCAD in conjunction with the National Federation of the Blind, alleging that E\*TRADE, operator of one of the largest ATM networks in the country, has failed to make the ATMs it operates, but does not own, accessible to the blind. The complaint was also filed on behalf of four plaintiffs, all Massachusetts residents, who represent the approximately 35,000 blind people in Massachusetts, who, in accordance with the Massachusetts Public Accommodations Act, are seeking the same access to bank and investment services available to sighted ATM users.
- **CVS** The division continued to monitor the Assurance of Discontinuance with CVS Stores, requiring them to remedy violations of turning radius and aisle width requirements. The division found multiple violations of the Assurance and ultimately reached a settlement by consent decree on March 24, 2004. The settlement required a company-wide physical barrier elimination; training; development of a physical accessibility policy, procedure, and customer complaint process; appointment of an ADA coordinator, and payment of fines in the amount of \$250,000 (\$200,000 up front and \$50,000 for future violations).
- **Fenway Park Concerts** The division investigated complaints from people with disabilities who had difficulty purchasing accessible seats through Ticketmaster, and whose accessible seats would have obstructed views if spectators stood during concerts. The division, working with the Department of Justice, negotiated a resolution with the Red Sox and concert promoter, Clear Channel.
- **Starwood Hotels/Cape Codder Hotel** The division continued to monitor the consent decree arising from architectural deficiencies under the ADA. After an audit in the summer of 2003, the division sought a response to access barriers it had identified.
- **Tennessee v. Lane** The Attorney General joined an *amicus curiae* brief filed in the United States Supreme Court arguing that Title II of the ADA, which require states and municipalities to provide persons with disabilities access to programs and services, was a valid abrogation of the Eleventh Amendment, and that claims for monetary damages arising from violations could be brought against state and municipal agencies.



- **Retail Advisory: Accessibility for Individuals with Disabilities in Retail and Department Stores** In March 2004, the division issued a retail advisory reminding retailers of the obligation to maintain aisles and turning radiuses.

## **SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES**

**Sexual Abuse by Clergy** The division contributed to the drafting of *The Sexual Abuse of Children in the Roman Catholic Archdiocese of Boston: A Report by the Attorney General*.

**The Massachusetts Hate Crimes Task Force** The Attorney General's Hate Crimes Task Force, comprising approximately 100 law enforcement officers and prosecutors, community leaders, civil rights advocates, victim assistance professionals, educators, and other leaders from throughout the Commonwealth, shares information and highlights efforts in Massachusetts related to hate crimes enforcement, response, training, and prevention. The Task Force recently finalized and published a "Know Your Rights" brochure for victims of hate crimes.

**Civil Rights in Schools** The division continued its focus on ensuring the civil rights of students attending schools in the Commonwealth. The division provided or participated in a variety of civil rights educational programs to train students, teachers, and administrators on hate crimes, bullying and hazing, and sexual orientation, racial, national origin, and religious harassment and discrimination. The programs for school administrators, teachers and staff include information about identifying and responding to unlawful conduct and creating comprehensive civil rights protection programs.

Programs the division organized and provided included a civil rights training for the entire staff of Attleboro Public Schools on September 2, 2003; anti-harassment training for the entire staff of the Sharon Public Schools on June 8 and August 31, 2004; and civil rights training for Sharon Youth Coalition on November 18, 2003.

Programs the division participated in included a civil rights presentation at Middleboro High School; a videotaped civil rights panel presentation with the Reading Police Department and School District for use in the Reading schools; a conference titled "Sexual Harassment and Hazing in Schools" on February 6, 2004; a Gender Bias Training Program at Putnam Vocational High School in Springfield on April 27, 2004; a Peer Leadership Training Program at Springfield High School of Science and Technology on May 6, 2004; and Respect Day at Grover Cleveland Middle School on June 4, 2004.

**Civil Rights and Police** In a collaborative effort to promote civil rights, assist police departments, and provide departments with technical assistance, the division offered and provided civil rights training to law enforcement, covering issues of hate crimes identification, response and prosecution, civil liability, sexual harassment, and racial and cultural awareness.

The division also investigated allegations of police misconduct, and police departments regularly consulted with the division for assistance on internal civil rights investigations. The division has worked closely with departments to ensure that they take appropriate remedial steps when credible evidence substantiates civil rights complaints.

**Racial Profiling** Chapter 228 of the Laws of 2000, An Act Providing for the Collection of Data Relative to Traffic Stops, requires law enforcement departments and agencies to collect data related to all traffic stops where a traffic citation or warning was issued. If the information “suggests” that a state police barracks or municipal police department “appears” to have engaged in racial or gender profiling, the Secretary of the Executive Office of Public Safety (EOPS), with the Attorney General, makes a determination whether to collect data on all traffic stops, including those not resulting in a warning, citation, or arrest.

The division has been an active member of the EOPS Secretary’s Racial and Gender Profiling Working Group, a group of about 70 law enforcement and community leaders from throughout the Commonwealth convened to advise the Secretary about data collection and data analysis required by the statute. On May 4, 2004, Northeastern University (and Secretary of EOPS) released *Massachusetts Racial and Gender Profiling Study* and *Racial and Gender Profiling Technical Report*. Following the release of this report, the Secretary of EOPS notified 249 police departments on May 21, 2004 that they must collect additional traffic stop data for an additional year.

**Civil Rights Initiatives with the National Association of Attorneys General (NAAG)** Division members continue to serve in leadership positions in the NAAG’s Civil Rights Working Group, which consists of representatives of state Attorneys General’s offices from throughout the country that work to enhance the cooperative relationship between the states and the U.S. Department of Justice and the Equal Employment Opportunity Commission in civil rights enforcement. Division members served on the organization committee for the May 2004 NAAG Civil Rights Conference, participated in presentations, and moderated panels.

**Democratic National Convention Security** The division assisted federal officials and Boston police in identifying and addressing civil rights and civil liberties issues arising from demonstrations and other actions taken at the Democratic Convention in the summer of 2004. This assistance included research

of legal issues of civil rights in soft security zones, permitting process for demonstrators, sites for protestors within sight and sound of the Fleet Center and other locations, arrest standards, use of force and search issues, and protocols and procedures for processing those arrested.

## OUTREACH, EDUCATION, AND TRAINING

Members of the division participated in Separate and Unequal: Segregation and Educational Opportunity in Metro Boston, the Harvard Civil Rights Project's conference on the 50th anniversary of **Brown v. Board of Education**; Violence in Schools: Immigrant Youth as Targets, a panel at the Juvenile Justice Institute's New Young American Conference; an NAACP regional conference on the Lynn case and racial profiling; and the Indian-American Forum for Political Education's annual luncheon on hate crimes and the Indian community in Massachusetts.

**Disability Community** Division staff continue to serve as members of the Coalition for the Legal Rights of People with Disabilities and the Massachusetts Developmental Disabilities Council.

**Fair Housing** The division participated on a panel titled "Familial Status Discrimination and Lead Paint Laws" as part of a program organized by HUD on the occasion of the 36<sup>th</sup> anniversary of the Fair Housing Act. The division spoke at a HUD National Fair Housing Conference on federal fair housing laws in Washington, D.C., on June 14 and 15, 2004. The division also presented at a fair housing training sponsored by the Greater Boston Association of Realtors, Harvard Civil Rights Project, Greater Boston Civil Rights Commission, and Citizens Housing and Planning Association.

## CONSUMER PROTECTION AND ANTITRUST DIVISION

The Consumer Protection and Antitrust Division (CPAD) is the leading voice in the Commonwealth for consumers disadvantaged by unfair or deceptive acts or practices in the marketplace. The division enforces both state and federal consumer protection and antitrust laws by investigating and prosecuting civil cases involving a wide array of issues. By aggressively enforcing the consumer and antitrust laws, CPAD helps protect consumers from unethical business practices and insures that businesses compete on a level playing field based on the best quality, service, and price.

CPAD also promulgates consumer protection regulations, mediates consumer complaints against businesses, and provides information to the public through the Attorney General's Consumer Hotline,

advisories and information on the Attorney General's Web site, distribution of brochures on a number of issues affecting consumers, and speaking engagements across the Commonwealth.

Through the Consumer Complaint and Information Section (CCIS), the division acts as a resource for consumers and businesses, providing information, direction to additional resources at the state and federal level, and free mediation services to consumers who have encountered a problem in a purchase of consumer goods or services. The division also provides grants to a statewide network of 19 Local Consumer Programs (LCP) and nine Face-to-Face Mediation Programs to furnish information and mediation services. The information CCIS and the LCP gather is available to the division for review and evaluation for possible legal action. Many cases the division has brought over the years have had their genesis in CCIS and the LCP, and patterns of unfair or deceptive conduct revealed by these cases also have served as the basis for draft legislation (identity theft, telemarketing fraud) and regulations (travel services, long-term care facilities).

In addition to investigating and prosecuting abuses within Massachusetts, the division also addresses regional disparities, as well as consumer protection and antitrust issues that may have a nationwide effect. The division works closely with other states to investigate and file cases addressing unfair or deceptive conduct, or antitrust issues, in areas such as predatory lending, privacy, health fraud, tobacco sales, pharmaceutical pricing, and high-tech industries.

CPAD staff included Jesse Caplan, Division Chief; Diane Lawton, Managing Attorney; Melissa Armstrong; Christopher Barry-Smith; Tiffany Bennett; Caitlin Burke; Paul Carey; Jack Christin; Christina Ciampolillo; April English; Julie Esposito; Mary Freeley; Sara Hinchey; Jeremy Janow; Stephanie Kahn; Brenda King; Mark Kmetz; Pam Kogut; Carmen Leon; Betty Maguire; Mary Marshall; Lois Martin; Rose Miller; David Monahan; Timothy Moran; Julie Papernik; Anya Petroff; Jeffrey Shapiro; Andria Simon; Christine Sullivan; Thuy Wagner; Judith Whiting; Betsy Whittey; Geoffrey Why; Marvinna Wilkes; and Mary Wollenhaupt. The following staff left the division before the end of Fiscal Year 2004: Paul Cipro; Emily Coleman; James D'Amour; Jennifer Galante; Brian Goodwin; Kenneth Miller; Janis DiLoreto Noble; Astrid Panameno; Jessica Roberts; and Ransom Shaw.

## SIGNIFICANT CASE SUMMARIES

### HEALTH CARE AND PRESCRIPTION DRUGS

- **Commonwealth v. Medco Health Solutions, Inc.** (U.S. District Court, Philadelphia, PA)  
In April 2004, CPAD obtained two separate settlements against Medco Health Solutions, resolving allegations that the company kept rebates owed to the state when it managed pharmacy

benefits for the Group Insurance Commission, and that the company engaged in other unfair and deceptive practices in connection with its “drug switching” or “therapeutic interchange” programs. Medco is the world’s largest pharmacy benefit manager (PBM) and contracts with health plans to manage their prescription drug benefit programs, including purchasing drugs from the pharmaceutical companies. In the Massachusetts-only false claims case, CPAD obtained a Consent Judgment against Medco that required the company to pay the Commonwealth \$5.5 million in damages incurred when Medco failed to pass through to the Group Insurance Commission “formulary rebates” from the drug companies. In the second case, Massachusetts joined Pennsylvania and Maine in leading a group of 20 states in resolving consumer protection allegations against Medco for failing to disclose to consumers and physicians material information about the negative financial impact of switching from one prescription drug to another. This multi-state settlement required Medco to pay an additional \$29.3 million to the states in restitution and other payments. The settlement also set a new standard for sweeping reform of the PBM industry. In total, Massachusetts received over \$6.7 million as a result of these actions, a portion of which will help fund prescription drug programs at community health centers across the state.

- **Bristol-Myers Squibb (BMS) Taxol Litigation** (U.S. District Court, D.C.) In June 2002, CPAD joined 28 other states in filing suit against BMS in connection with allegations that BMS kept cheaper generic versions of its cancer drug Taxol off the market by manipulating U.S. Patent and Trademark Office processes to secure patents for its name brand drug that had no legal validity. In April 2003, BMS entered into a Consent Judgment with Massachusetts and all 49 other states resolving the lawsuit. BMS agreed to pay \$55 million to state agencies and consumers nationwide. In June 2004, 125 Massachusetts consumers received refund checks totaling \$68,000. In the second half of calendar year 2004, Massachusetts agencies and programs, including Medicaid, the Department of Public Health, the Executive Office of Pharmacy Services, and the Group Insurance Commission, will receive reimbursements totaling approximately \$1 million.
- **Pharmacy Assessment Cases** (Suffolk Superior Court) In April and May 2003, CPAD, working with the Insurance Division, obtained Assurances of Discontinuance with four major chain pharmacies — CVS Pharmacy, Inc., Stop & Shop, Walgreens, and Wal-Mart — resolving claims that the pharmacies had violated state consumer protection and insurance laws by misrepresenting to consumers that the so-called “Pharmacy Assessment” law, which imposed fees on pharmacies based on the number of prescriptions filled, was a tax obligation on the consumers, and improperly billing those consumers for this assessment. In June 2004, another Assurance was obtained against Brooks Pharmacy, resolving similar claims. The Assurances of

Discontinuance followed the Attorney General's investigation of, and warning letters to, the pharmacies based on this conduct. Under the Assurances of Discontinuance, the pharmacies agreed to reimburse all affected consumers (refunds totaling more than \$6 million), and also paid the Commonwealth monetary awards totaling \$570,000 (CVS-\$300,000; Brooks-\$85,000; Stop & Shop-\$65,000; Walgreens-\$60,000; Wal-Mart-\$60,000). The pharmacies also agreed to significant injunctive relief, preventing future violations.

- **Commonwealth v. Logan Healthcare Facility, Inc., et al.** (Suffolk Superior Court) In June 2003, CPAD, with the assistance of the Department of Public Health, filed suit against the owners and operators of five nursing home facilities located in the South Shore and Southeastern Massachusetts, alleging that they grossly mismanaged the financial operations of the nursing homes, putting the health and welfare of the facilities' 349 patients at risk. CPAD also sought and successfully obtained the appointment of a temporary receiver over the nursing homes, and a preliminary injunction against the defendants, all members of the Logan family, preventing them from transferring any of their assets or the assets of the facilities. The Commonwealth's lawsuit resulted in the nursing homes being sold to new owners or closed, and patients being transferred safely to new facilities.

#### ELDER PROTECTION

- **Commonwealth v. David Johnston d/b/a Johnston Funeral Home** (Plymouth Superior Court, U.S. Bankruptcy Court) In August 2002, CPAD filed suit against David Johnston d/b/a Johnston Funeral Home seeking restitution for at least 48 consumers who paid over \$140,000 in pre-need funeral deposits after Johnston, in violation of state law, could not account for those deposits. In December 2002, Johnston filed for bankruptcy protection. In June 2004, CPAD obtained a Consent Judgment against Johnston, which requires him to pay \$234,313 in restitution and attorneys fees.
- **L.O. Paradis Funeral Home** (Bristol Superior Court) In June 2003, the Southeastern Massachusetts Office of the Attorney General settled allegations against the L.O. Paradis Funeral Home in Fall River, requiring the funeral home owner and operator to refund more than \$480,000 to 114 residents for failing to account for and honor pre-need funeral contracts with customers. In December 2003, more than \$273,000 had been returned to customers.

#### CHILD PROTECTION

- **Online Sales of Alcohol to Underage Students** (Suffolk Superior Court) In early 2004, CPAD and the Investigations Division, with the assistance of local colleges, conducted undercover sting operations where underage college students were able to purchase alcohol from businesses



over the Internet. The college students assisting the Attorney General's Office were able to purchase beer, wine, and hard liquor from seven online businesses, and three different shipping companies delivered the alcohol to these students without asking for any proof of age. As a result of the sting operations, CPAD filed lawsuits in June 2004 against four of the online retailers — Wine Globe, Sherry-Lehman, Clubs of America, and Queen Anne Wine Exchange — and obtained orders enjoining them from continuing to sell alcohol to Massachusetts buyers. CPAD referred the three shipping companies (UPS, FedEx, and DHL) and three additional dealers (Geerlings & Wade, Wine.com, and The Wine Messenger) that held licenses to sell alcohol in Massachusetts to the Alcohol Beverage Control Commission for formal administrative hearings.

- **Online Sales of Cigarettes to Minors** (Suffolk Superior Court) In September 2003, CPAD filed lawsuits against three out-of-state Internet cigarette dealers for selling cigarettes to Massachusetts teenagers without verifying whether they were 18 years old — the legal age to purchase cigarettes. The Internet dealers were dirtcheapcig.com; eSmokes, Inc.; and S4L Distributing, Inc. A fourth Internet cigarette dealer, Broadway Smoke Shop of Salem, New Hampshire, entered into an Assurance of Discontinuance, requiring it to pay \$3,000 to the Commonwealth and end its illegal sales. The lawsuits and settlement stemmed from an undercover sting operation in which teenagers between the ages of 13 and 17, with the consent of their parents, assisted the Attorney General's Office by buying cigarettes over the Internet. None of the online dealers required the teens to provide a driver's license or other type of age verification. The lawsuits also alleged that the dealers violated state law by failing to disclose to consumers that they could be held liable to the state for cigarette taxes because the cigarettes did not bear the Massachusetts excise tax stamp. In April 2004, the court entered a default judgment against one of the online retailers, S4L Distributing, Inc., ordering it to pay civil penalties and costs totaling close to \$1.5 million.

- **In Re Wal-Mart Stores** (Suffolk Superior Court) In September 2003, CPAD joined 42 other states in obtaining an Assurance of Discontinuance against Wal-Mart that required the company to implement new policies and procedures to reduce tobacco sales to minors. The agreement affects all 46 Wal-Mart and Sam's Club stores in Massachusetts, and follows similar agreements reached with the Walgreens drugstore chain and Exxon Mobil Corporation. It also required Wal-Mart to pay the Commonwealth close to \$10,000.

- **Online Sales of Illegal Fireworks** (Suffolk Superior Court) In June 2002, and again in June 2003, CPAD conducted undercover sting operations where investigators from the Investigations Division were able to purchase illegal fireworks from companies over the Internet,

and to have them delivered to addresses within Massachusetts. Both investigations resulted in lawsuits being filed against five out-of-state fireworks dealers.

- **OnLine Sales of Ammunition** (Suffolk Superior Court) In October 2003, CPAD filed lawsuits against five out-of-state ammunition dealers for illegally selling ammunition over the Internet to Massachusetts residents. The lawsuits resulted from undercover sting operations conducted by the Investigations Division. State law requires that dealers be licensed to sell ammunition and prohibits the sale of ammunition to minors or those without a permit. None of the companies held the proper state license, nor did they take the required steps to verify that the purchasers were authorized under state law to buy ammunition. All five dealers entered into Consent Judgments resolving the allegations, and each paid a \$2,500 penalty.
- **Commonwealth v. Great Lake Camp, Inc. d/b/a Quabbin Camps** (Worcester Superior Court) In November 2003, CPAD obtained a Consent Judgment against George Deren and Charles Sub, co-founders of Quabbin Camps in Hardwick, Massachusetts, for defrauding parents that had paid to send their special needs children to the camp, only to be told at the last minute that the camp would not be opening and that the consumers would not receive refunds. The Attorney General's Central Massachusetts Office originally filed the case in February 2002. As a result of the Attorney General's action, in February 2004, more than 40 families received refund checks totaling \$140,000.

#### PROTECTION OF IMMIGRANTS AND MINORITIES

- **Commonwealth v. William Ansara and Greater Lowell Immigration Services Center** (Suffolk Superior Court) In September 2003, CPAD filed a lawsuit against William Ansara, conducting business as Greater Lowell Immigration Services Center, for defrauding local immigrants seeking legal assistance with immigration and labor proceedings. The lawsuit alleged that Ansara, who is not a lawyer, failed to perform much of the immigration- and labor-related services his immigrant clients paid for. In some cases, he forged or altered government documents and converted, for his own use, client checks meant for the Immigration and Naturalization Service. Ansara simultaneously agreed to a Consent Judgment resolving the claims. The judgment requires Ansara to pay at least \$51,000 in restitution to consumers, and prohibits him from engaging in future immigration-related work in Massachusetts.
- **Commonwealth v. Joseph Hai Nguyen and Stelios Vavlitis** (Suffolk Superior Court) In February 2003, CPAD filed a consumer protection action alleging that Joseph Hai Nguyen and Stelios Vavlitis targeted Vietnamese-speaking home buyers in a mortgage and real estate brokering scam by exploiting the language barrier facing Vietnamese property buyers and their



unfamiliarity with mortgage financing; illegally holding themselves out as mortgage lenders, mortgage brokers, and real estate brokers; inducing the consumers to pay thousands of dollars in advance fees; and then failing to arrange financing as promised. In June 2004, Nguyen entered into a Consent Judgment in which he agreed to reimburse consumers and pay an additional \$4,000 penalty. CPAD continues to litigate against Vavlitis.

#### INTERNET AND HIGH TECH

- **Commonwealth v. Mainline Airways and Luke R. Thompson** (Suffolk Superior Court) In June 2003, CPAD filed suit against Mainline Airways and its principal, Luke R. Thompson, alleging that Thompson defrauded consumers by selling them discounted flights between Los Angeles and Honolulu on a non-existent airline he called “Mainline Airways.” Thompson used an elaborate Web site and online booking system to perpetrate the fraud. In August 2003, a preliminary injunction was entered, effectively shutting down the Mainline Airways operation.
- **Commonwealth v. Clockworks.com** (Suffolk Superior Court) In December 2003, CPAD filed suit against Clockworks.com of Westfield, Massachusetts, and its owner, James Stoudenmire, for unfair and deceptive practices in connection with offering watch and clock repairs and supplies. The lawsuit alleged that Stoudenmire failed to deliver the products advertised on his Web site to at least 126 consumers in Massachusetts and 40 other states.

#### PRIVACY AND IDENTITY THEFT

- **Commonwealth v. TracerServices.Com** (Suffolk Superior Court) In February 2004, CPAD filed suit against Tracer Services, Inc., and its principals for operating a Web site, TracerServices.com, that sold personal financial information about individuals ranging from social security numbers to credit reports to bank account statements — without the knowledge or consent of the targeted individuals. The lawsuit resulted from an undercover investigation where an investigator with the Investigations Division bought from TracerServices.com the social security number, credit report, and banking information of an Assistant Attorney General. The lawsuit alleged that the sale of this information violated both state and federal law, including the Fair Credit Reporting Act, the Massachusetts Consumer Credit Reporting Act, and the Gramm-Leach-Bliley Act. The information obtained could, in the wrong hands, be used to steal someone’s identity, and then to open credit cards in someone else’s name. CPAD successfully obtained a preliminary injunction preventing the company from selling such information about any Massachusetts resident, or to any Massachusetts resident, in the future.

#### CONSUMER CREDIT AND PREDATORY LENDING

- **Commonwealth v. Household International** (Suffolk Superior Court) In December 2002, CPAD, working with the Massachusetts Division of Banks and Attorneys General and

banking regulators in other states, filed suit against Household International, also known as Household Finance Corporation and Beneficial Finance (Household), for violations of state consumer protection and banking laws. The lawsuit alleged that Household, one of the nation's largest mortgage companies, defrauded consumers by, among other things, charging higher interest rates than promised, adding costly prepayment penalties, and providing deceitful information about insurance policies. Simultaneous with the filing of the lawsuit, the states obtained Consent Judgments that resolved the allegations. Under the settlement with the states, Household agreed to pay \$484 million in restitution nationwide — the largest consumer lending settlement ever. Household also agreed to injunctive relief that significantly changes the way the company does business. In December 2003, close to 11,000 Massachusetts consumers received refunds totaling \$13.5 million.

- **Commonwealth v. Cambridge Credit Counseling Corp., et al.** (Suffolk Superior Court) In April 2004, CPAD and the Charities Division filed suit against Cambridge Credit Counseling Corporation (Cambridge), and its controlling directors and officers, including John and Richard Puccio, for breaches of fiduciary obligations and unfair and deceptive practices under Massachusetts charities and consumer protection laws. Cambridge is an Agawam, Massachusetts-based nonprofit credit counseling charity. The lawsuit alleges that Cambridge and several of its directors and officers funneled more than \$60 million of the charity's assets to for-profit companies owned by insiders, including the Puccios, and also misled thousands of consumers about the benefits of joining its credit counseling program. The lawsuit seeks, among other relief, to remove the Puccios from the charity, to void improper related-party contracts, to force the defendants to disgorge their ill-gotten gains, and to pay restitution to consumers.
- **Commonwealth v. Ford Motor Credit** (Suffolk Superior Court) In June 2004, CPAD joined Attorneys General in 36 states in filing suit against Ford Motor Credit, alleging that the company committed unfair and deceptive practices in connection with Ford's "Red Carpet" lease program. The lawsuit alleged that Ford Motor Credit and certain Ford and Lincoln-Mercury dealers quoted consumers inflated lease pay-off amounts, and as a result, consumers paid more for their lease pay-offs than they should have. Simultaneous with the filing of the lawsuit, Ford Motor Credit and the dealers entered into a Consent Judgment that returns \$100 each to approximately 400 qualified Massachusetts consumers that leased cars under the program.

#### TELEMARKETING

- **Commonwealth v. Integrated Credit Solutions, Inc., and Flagship Capital Services, Corp.** (U.S. District Court, Massachusetts) In December 2002, CPAD filed an enforcement action against the two telemarketing companies, Integrated Credit Solutions (ICS) and Flagship Capital

Services, Corp., alleging that they violated the federal Telephone Consumer Protection Act and state consumer protection laws by using pre-recorded telephone messages to deceptively induce thousands of consumers to pay exorbitant “enrollment” and “education” fees to obtain “non-profit” credit counseling services. According to the complaint, ICS unlawfully delivered as many as 120,000 pre-recorded messages to Massachusetts residents in a single day, and collected over \$1 million in unlawful fees from Massachusetts consumers. In May 2004, CPAD obtained a Consent Judgment against ICS requiring the telemarketer to pay more than \$600,000 in restitution to approximately 2,600 Massachusetts consumers that paid for credit counseling services marketed through ICS. The judgment also required ICS to pay a \$50,000 penalty to the Commonwealth, and prohibits ICS from collecting up-front fees from consumers, and from using pre-recorded messages that solicit any money payable to ICS.

- **Commonwealth v. Allied Mortgage** (Suffolk Superior Court) In December 2003, CPAD filed suit against Allied Mortgage, alleging that the Texas-based mortgage broker violated state and federal telemarketing laws, including the federal Telephone Consumer Protection Act and the Massachusetts Do Not Call law, by unlawfully sending unsolicited pre-recorded phone messages to hundreds of Massachusetts consumers, including consumers who had placed their phone numbers on the newly established Massachusetts Do Not Call registry. Simultaneous with the filing of the lawsuit, CPAD obtained a Consent Judgment against the company, requiring it to pay \$65,000 to the Commonwealth and to abide by both state and federal telemarketing laws.

#### OTHER CONSUMER PROTECTION

- **Commonwealth v. Americar Superstore** (Suffolk Superior Court) In July 2003, CPAD filed suit against a Tewksbury auto dealership, Americar Superstore, alleging that the dealership and its owners engaged in a pattern of unfair and deceptive practices in the sale and servicing of used motor vehicles. The complaint alleged that the defendants failed to honor warranties, failed to promptly provide vehicle titles, failed to return customer deposits, and made misrepresentations to consumers about cars available for sale. Simultaneously with the filing of the lawsuit, CPAD obtained a Consent Judgment that requires the dealership to make restitution to injured consumers, to pay \$45,000 in civil penalties, and to change its business practices going forward. This was the second action by the Attorney General’s Office against the dealership. In April 1997, Americar Superstore entered into a Consent Judgment settling unrelated allegations pertaining to the used car lemon law.
- **Commonwealth v. Riverside Mitsubishi, et al.** (Worcester Superior Court) In December 2003, the Attorney General’s Central Massachusetts Office, with the assistance of CPAD, filed

suit against Riverside Mitsubishi, an Auburn, Massachusetts car dealership, and its owners and operators, Todd, Daryl, and Brenda Rivernider. The Attorney General's lawsuit alleged that the dealership and the Riverniders defrauded well over 100 consumers by failing to pay off outstanding trade-in loans on cars, failing to provide consumers with titles to cars they bought, and in some cases, failing to deliver cars at all, when the dealership abruptly closed its doors in November 2003. The Attorney General's Office immediately obtained court orders to freeze the defendants' assets. In May 2004, as a result of new actions brought by the Attorney General's Office, Daryl and Brenda Rivernider were found in contempt of court for selling and otherwise transferring certain assets without court approval. The Attorney General's Office is continuing to litigate this case to obtain restitution for consumers as well as civil penalties, costs, and injunctive relief.

- **Commonwealth v. Car Center USA, et al.** (Suffolk Superior Court) In March 2004, CPAD filed suit against four North Shore used car dealerships and their principal owners, alleging that they defrauded consumers out of hundreds of thousands of dollars by failing to pay off outstanding trade-in loans on cars, failing to timely deliver car titles to consumers, and failing to purchase or activate extended warranties purchased by consumers. CPAD also obtained preliminary court orders that significantly restricted the dealerships' practices. The dealerships and individuals subject to the lawsuit include Car Center USA, Suzuki of Boston, Foreign Cars North, Cars R Us, and their principals, Nader and Ardeshir Jamali Affoussi. CPAD is continuing to litigate this case to obtain restitution for consumers as well as civil penalties, costs, and injunctive relief.

- **Commonwealth v. Adventure World RV, Inc., et al.** (Middlesex Superior Court) In May 2004, the Attorney General's Central Massachusetts Office, with the assistance of CPAD, filed suit against Adventure World RV, Campers Inn of Ayer, and owner David Hirsch, for defrauding dozens of consumers out of at least \$2 million in connection with the sale of recreational vehicles (RVs). The lawsuit alleged that the RV dealership, located in Shirley, Massachusetts, failed to pay off outstanding loans on RVs that consumers traded in, failed to provide titles to RVs sold to consumers, and failed to deliver extended warranties or complete repairs as promised. The Attorney General's Office successfully obtained preliminary court orders freezing the company's assets. The case continues to be litigated.

- **Commonwealth v. Boston Fitness LLC (d/b/a Gold's Gym Downtown Crossing)** (Suffolk Superior Court) In June 2004, CPAD filed suit against Boston Fitness LLC, doing business as Gold's Gym Downtown Crossing in Boston, and its owner, Marc Orlandella, for multiple violations of the Massachusetts Consumer Protection Act and other laws regulating health

clubs. The Attorney General's lawsuit alleges that, among other violations, Orlandella and Gold's Gym took thousands of dollars in membership fees from consumers and then refused to refund these fees when the club failed to open as advertised. CPAD continues to litigate this case.

- **Commonwealth v. Global Marketing, LTD and Dennis Drummond** (Suffolk Superior Court) In December 2003, CPAD filed suit against Global Marketing, LTD, its principals, Dennis and Linda Drummond, and related entities, for defrauding as many as 90 consumers out of hundreds of thousands of dollars in connection with the marketing and sale of vacation time-shares. The Commonwealth also obtained preliminary court orders against the defendants, freezing their assets and prohibiting them from continuing to sell time-share properties. This case constitutes the second lawsuit brought against the Drummonds by the Attorney General's Office. In 1990, a judgment was entered against them for over \$200,000 in connection with similar fraudulent sales of time-share properties. CPAD continues to litigate this case, seeking restitution, penalties, and costs.

- **Commonwealth v. James Brien and American Sunroom Company** (Suffolk Superior Court) In February 2004, CPAD filed suit against the American Sunroom Company and its owner, James Brien of Andover, Massachusetts, for defrauding close to 100 consumers out of nearly \$1 million in connection with the sale and installation of sunroom additions to their homes. The lawsuit alleged that Brien and American Sunroom routinely solicited deposits of \$15,000 to \$28,000 from homeowners and then failed to purchase or deliver the sunrooms — instead converting consumers' funds for Brien's own personal use. CPAD also obtained preliminary court orders against Brien, freezing his personal and corporate assets, and prohibiting him from selling sunrooms in the future. CPAD continues to litigate this case, seeking restitution, penalties, and costs.

- **Commonwealth v. Gaetano J. Scarpaci and Scarpaci Waterproofing, Inc.** (Suffolk Superior Court) In January 2003, CPAD filed an enforcement action against Gaetano Scarpaci and Scarpaci Waterproofing, alleging that Scarpaci used deception to procure home improvement contracts from consumers and then violated consumer protection laws and regulations by, among other things, requiring unlawfully large deposits from consumers, performing shoddy and dilatory work, failing to complete projects, and then threatening or intimidating consumers who complained about him. In February 2003, Scarpaci filed for bankruptcy protection, and in March 2004, CPAD obtained a Consent Judgment that required Scarpaci to pay restitution to consumers, and permanently enjoined him from conducting any future home contracting

business. CPAD's civil case followed the Attorney General's successful criminal prosecution against Scarpaci in 2002.

- **Commonwealth v. Francis P. Bellotti, Jr. and Insurance Restoration Services, Inc.** (Suffolk Superior Court) In June 2003, CPAD filed an enforcement action against Francis P. Bellotti, Jr., a South Attleboro contractor, for defrauding at least 13 fire victims. According to the lawsuit, Bellotti would rush to house fires, use high-pressure tactics to get the homeowners to contract for his restoration services, and then have them sign over their insurance checks. Bellotti would then fail to complete the work or abandon the projects, leaving many homeowners living in trailers or other accommodations for a year or longer. The lawsuit seeks consumer restitution, penalties, and injunctive relief. In July 2003, CPAD obtained a preliminary injunction order that prohibits Bellotti from destroying records and freezes his assets for any purpose other than necessary expenses. Trial is scheduled for 2005.

- **Stop & Shop Supermarket Company** In October 2003, as a result of joint United States Department of Agriculture (USDA) and CPAD investigations, Stop & Shop agreed to pay \$25,000 to the Commonwealth and to refrain from falsely using the USDA shield in its advertisements and circulars. In October 2001, Stop & Shop paid the Commonwealth \$95,000 to resolve allegations that the Quincy-based supermarket chain had falsely advertised a brand of chicken with a USDA "Grade A" shield. A later investigation by the USDA and the Attorney General's Office found that the supermarket had falsely used the shield "USDA Choice" in advertising veal. In resolving the more recent allegations, Stop & Shop also agreed to follow a compliance plan and a series of checks to prevent future misstatements in its advertising.

#### ANTITRUST

- **Microsoft Antitrust Litigation** (U.S. Court of Appeals, D.C./U.S. District Court, D.C.) In 1998, Massachusetts, a number of other states, and the Department of Justice filed suit against Microsoft Corporation, alleging that the company violated the antitrust laws by monopolizing the operating systems market and other predatory practices. On June 28, 2001, the D.C. Circuit unanimously affirmed the trial court's finding that Microsoft had engaged in illegal monopolistic practices, but vacated the trial court's decision to break up the company, and remanded to the trial court for further proceedings on remedies. In November 2001, DOJ and nine states (the "settling" states) agreed to a proposed settlement with Microsoft. Massachusetts and nine other states (the "litigating" states) refused to settle the case, and filed their own remedies proposal with the court. On November 1, 2002, after a 32-day evidentiary trial on an appropriate antitrust remedy, the trial court issued orders essentially imposing the remedy negotiated by DOJ and the settling states. On November 29, 2002, Massachusetts



announced that it was appealing the remedies decision to the D.C. Circuit. The remaining “litigating” states did not appeal the remedies decision. Oral arguments in the Massachusetts appeal were heard on November 4, 2003, and on June 30, 2004, the D.C. Circuit affirmed the trial court’s decision on an appropriate remedy. This ended the litigation against Microsoft, and CPAD will work with the states and DOJ to ensure Microsoft complies with the court’s remedies order.

On December 13, 2002, Massachusetts filed its motion for attorneys’ fees in the district court. On September 22, 2003, the trial court ordered Microsoft to pay Massachusetts \$967,014 for legal fees incurred by the Attorney General’s Office in pursuing its antitrust case against Microsoft.

- **CD Antitrust Litigation** (U.S. District Court, ME) In November 2000, CPAD joined over 40 other states in filing an antitrust lawsuit against major record companies and music retailers, alleging an illegal conspiracy to prevent discounting in the sale of music CDs. In September 2002, the states announced the entry of a Consent Judgment against the record companies and music retailers that settled the lawsuit and would result in nationwide consumer restitution in excess of \$67 million, and the distribution of over 5 million free CDs to public libraries and/or other state entities across the country. In February 2004, approximately 68,000 Massachusetts consumers received refund checks totaling over \$950,000. In June 2004, over 124,000 music CDs were shipped to 488 Massachusetts public libraries and branches across the state.

- **Commonwealth v. Oracle Corp.** (U.S. District Court, San Francisco, CA) In February 2004, CPAD joined the Department of Justice and five other states in bringing an antitrust lawsuit against Oracle Corp. to block its hostile takeover of rival software company, PeopleSoft Inc. Oracle and PeopleSoft are two of the largest designers of “enterprise” software systems that automate financial and human resource management functions for government and large organizations. The lawsuit alleged that the proposed acquisition of PeopleSoft by Oracle would substantially reduce competition and ultimately hurt consumers in Massachusetts and across the country. Trial commenced in June 2004.

- **Commonwealth v. First Data Corporation and Concord EFS** (U.S. District Court, D.C.) In October 2003, CPAD joined the Department of Justice and eight other states in bringing an antitrust lawsuit to block the merger of First Data Corporation (First Data) and Concord EFS, each of which owns competing bank PIN debit networks. First Data owns the NYCE network and Concord owns the STAR network, which together accounted for over \$4 billion in revenues.



The lawsuit alleged that the merger would substantially reduce competition and would result in consumers paying higher prices for goods and services from merchants that offer debit transactions through these networks. On December 15, 2003, on the day the case was to go to trial, the two companies settled the case by agreeing that First Data would divest its entire interest in the NYCE network.

### STATISTICAL SUMMARY

Penalties/Costs/Other Money Returned to the Commonwealth	\$ 8,159,807
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#### Consumer Restitution Recovered

CPAD	\$16,255,953 <sup>1</sup>
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CCIS	\$ 442,533
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Local Consumer Programs	\$ 3,591,960
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#### Consumer Hotline Calls

CCIS	71,189
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Local Consumer Programs	55,947
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#### Consumer Complaints Received

CCIS and Local Consumer Programs	13,153
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#### Consumer Complaints Mediated

CCIS	1,272
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Local Consumer Programs	7,271
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<sup>1</sup> This restitution figure does not include the 124,000 music CDs that were shipped in June 2004 to 488 Massachusetts public libraries and branches pursuant to the Compact Disc litigation settlement.

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

*Amicus Curiae* In addition to signing on to *amicus curiae* briefs sponsored by other state Attorneys General in a number of matters, including supporting the constitutionality of the federal “Do Not Call” law and advocating for consumers in banking matters, CPAD wrote and submitted two *amicus curiae* briefs to the Massachusetts Supreme Judicial Court:

- **Mulhern v. MacLeod**, 441 Mass. 754, 808 N.E.2d 778 (May 21, 2004) CPAD filed an *amicus curiae* brief in support of the position that individuals may bring private actions in Massachusetts state court against telemarketers who violate the federal Telephone Consumer Protection Act (TCPA). CPAD’s brief, filed in February 2004, argued that no specific state-enabling legislation was needed in order for a private plaintiff to initiate suit against a company for sending unsolicited faxes in violation of the TCPA. On May 21, 2004, the Supreme Judicial Court agreed, reversing the decision of the Superior Court and remanding the case for further proceedings.
- **Darviris v. Petros**, SJC-09182 (argued April 8, 2004) CPAD filed an *amicus curiae* brief in support of the position that a violation of the Attorney General’s Consumer Protection Regulation, 940 C.M.R. 3.16(3), is a *per se* violation of the Massachusetts Consumer Protection Act, M.G.L. c. 93A. The court below, in dismissing a patient’s claim under c. 93A against her surgeon, held that the patient had to prove underlying unfairness or deception by her doctor, not just that the doctor’s conduct violated an existing consumer protection law or regulation — in this case a state law requiring informed consent. CPAD’s briefs, filed in February and March 2004, argued that the court below had erred on this point of law, and asked the Supreme Judicial Court to clarify that violations of other consumer protection laws and regulations constitute violations of c. 93A, or to affirm the decision below on different grounds. The case was argued on April 8, 2004, and is expected to be decided in August 2004.

**Department of Social Services (DSS) Appeals** Several CPAD attorneys also assisted the Government Bureau by successfully handling appeals in challenges to court decisions upholding DSS determinations to terminate parental rights in connection with abused or neglected children.

### TOBACCO

**Cigarette Advertising and Sales Targeted to Minors** In September 2003, and again in March 2004, the Attorney General’s Office joined other states across the country in asking Congress to pass the Prevent All Cigarette Trafficking Act (PACT Act), targeting Internet and other mail-order tobacco retailers. In November 2003, CPAD announced a multi-state agreement with four major tobacco

companies — Brown & Williamson, Philip Morris, R.J. Reynolds, and U.S. Smokeless Tobacco Co. — that requires them to remove all their advertising from magazines sent to schools, like Time, Newsweek, and U.S. News & World Report.

**Other Efforts to Reduce Smoking** CPAD took additional actions, often in coordination with other states and the National Association of Attorneys General, to reduce the availability of cigarettes and to reduce smoking. In August 2003, Massachusetts joined a multi-state letter to the Motion Picture Association of America calling on the industry to restrict the depiction of smoking in movies. In October 2003, Massachusetts joined other states in asking NASCAR to end all tobacco sponsorships. In July 2003, CPAD awarded \$90,000 from the Local Consumer Aid Fund to four local tobacco control programs. The money had been paid by CVS Corp. to satisfy a Consent Judgment entered after CVS was found to have violated an earlier Assurance of Discontinuance relating to its tobacco sales practices. The funded programs conducted educational activities at local stores and reported violations of tobacco laws and regulations.

**The Tobacco Master Settlement** The Commonwealth received \$251,084,195 in April 2004, as its share of the Annual Payment under the 1998 Tobacco Master Settlement Agreement, and another \$2,537,110 in October 2003, in back MSA payments from Premier Manufacturing, Inc., bringing the total amount received to more than \$1.4 billion. CPAD closely monitored and enforced the settlement to ensure that the Commonwealth received the full amounts due under the agreement. The Attorney General also reported quarterly to the legislature on MSA payments, under G.L. c. 29D, § 3(i).

**Non-Participating Manufacturer (NPM) Enforcement** In May 2004, the Massachusetts state legislature enacted a new law initiated by Attorney General Tom Reilly and sponsored by Representative Daniel Bosley and Senators Stanley Rosenberg and Richard Moore that strengthens existing law requiring tobacco companies that are not participants in the Master Settlement Agreement (“non-participating manufacturers” or “NPMs”) to deposit funds into an escrow account as funds to be used to recover smoking-related health costs. Under the new law, NPMs are required to appoint a Massachusetts agent and cannot sell cigarettes in Massachusetts until and unless an escrow account has been established, funds are deposited, and all cigarette brands sold in the state are listed on a directory. CPAD continued to litigate cases previously filed against cigarette manufacturers that did not comply with the state’s NPM Escrow Law (G.L. c. 94E). Massachusetts also continued to participate with Attorneys General in other states in defending litigation brought to challenge the NPM enforcement activities of those states.

## OUTREACH, EDUCATION, AND TRAINING

**Consumer Protection Education/Advisories** CPAD, in some cases in coordination with other divisions within the Attorney General's Office, issued consumer brochures and advisories on pressing consumer issues such as: identity theft; credit counseling; prescription drug discount plans; cross-border telemarketing and lottery scams targeting seniors; counterfeit check schemes; and nursing home patient transfer restrictions. CPAD also helped publish or update a number of Attorney General consumer guides and brochures, including the *Massachusetts Guide to Cable Rights*, the *Attorney General's Guide to the Internet*, and *Privacy Rights and Protections*. CPAD, particularly through the efforts of the Consumer Complaint and Information Section (CCIS), also sponsored a series of National Consumer Week initiatives in February 2004.

**Consumer Complaint and Information Section (CCIS)** CCIS provided consumer information on all manner of issues by responding to over 71,000 telephone calls to the Consumer Hotline, responding to letters, distributing brochures, and through public speaking engagements. CCIS also responded to approximately 234 public records requests from the press and consumers seeking complaint information against specific businesses. Staff members also participated in National Consumer Week activities in February 2004 by, among other things, providing consumers at several MBTA stations with brochures on various consumer protection issues and with consumer complaint forms.

**CPAD Attorneys** CPAD attorneys participated as speakers and panelists in consumer education events, as well as in industry seminars and forums, on numerous issues such as identity fraud, Internet safety, predatory lending, manufactured housing, telemarketing fraud, and other consumer protection issues.

## ENVIRONMENTAL PROTECTION DIVISION

The Environmental Protection Division (EPD) serves as litigation counsel on environmental issues for various state agencies, particularly those within the Executive Office of Environmental Affairs. EPD handles the Commonwealth's civil litigation to enforce environmental protection programs established by state statutes and regulations, including laws governing air pollution, water pollution, water supply, waterways, wetlands, and hazardous and solid waste. EPD also plays a key role under the Clean State Initiative to ensure that the Commonwealth's own agencies abide by state and federal environmental laws, and in doing so the division may bring enforcement actions against those agencies in court where the Attorney General, in his enforcement discretion, deems action necessary. Based on the Office's broad authority to protect the environment of the Commonwealth, EPD initiates and intervenes in

state and federal litigation, and participates in administrative proceedings before federal agencies on significant environmental issues. EPD defends lawsuits challenging the actions of state environmental agencies and the legality of state environmental laws.

EPD staff included James R. Milkey, Division Chief; Frederick Augenster; Matthew Brock; Nora Chorover; Carolyn Edwards; Benjamin Ericson; James Farrell; I. Andrew Goldberg; Nancy (Betsy) Harper; Carol Iancu; Matthew Ireland; Eleanor Johnson; Siu Tip Lam; Trevor Murray; William Pardee; Amy Pinabella, Dawn Stolfi Stalenhoef; and Danah Tench.

## **SIGNIFICANT CASE SUMMARIES**

### **STATE AIR POLLUTION LAWS AND REGULATIONS**

- **Waters Technology Corp.** This case involved significant air pollution violations by a company in Taunton. EPD obtained a settlement that included an injunction requiring full compliance, a record civil penalty of \$5.9 million, and a \$600,000 Supplemental Environmental Project.
- **Trigen** In a case involving monitoring and reporting violations at a power plant in Boston, EPD obtained a settlement requiring full compliance and a civil penalty of \$210,000 (one third of which can be waived if the company stays in full compliance).
- **Gitto Global** EPD continued the prosecution of its case against Gitto Global Corp., a plastics manufacturer's facility in Lunenburg. In this case, EPD alleged that the company violated various state environmental laws, including bypassing its air pollution control equipment. In Fiscal Year 2004, EPD obtained a settlement requiring full compliance, significant lead reduction measures that go beyond compliance, and a \$225,000 penalty.
- **Power Plants** In May 2001, the Department of Environmental Protection (DEP) adopted new emissions standards for the six older power plants in Massachusetts. EPD continued its defense of a challenge to those regulations filed by the owner of one of the affected power plants.

### **NATIONAL AND REGIONAL AIR POLLUTION ISSUES**

- **Global Warming/Climate Change** Attorney General Reilly continued his leadership role in seeking to address the problem of global warming. On August 28, 2003, the U.S. Environmental Protection Agency issued two rulings declining to regulate greenhouse gases

under the federal Clean Air Act. The Office spearheaded a challenge to those rulings in Commonwealth of Mass. v. EPA in the D.C. Circuit Court of Appeals. Sixteen states or other governmental entities and 14 national or regional environmental groups joined in the challenge. EPD filed its opening brief on June 22, 2004.

- **Mercury Emissions** In January 2004, the federal EPA issued proposed standards for the emission of mercury from power plants. Power plants are the largest source of mercury, which poses serious neurological risks, especially to children and pregnant women. EPD submitted comments denouncing this proposal as inadequate and inconsistent with the requirements of the Clean Air Act.
- **New Source Review** EPD continued to play a significant role in a multi-state and EPA enforcement action against a large Ohio-based power company for upgrading plants without installing Best Available Control Technology as required by the New Source Review (NSR) provisions of the federal Clean Air Act. During Fiscal Year 2004, significant discovery in American Electric Power continued. In the meantime, EPD continued its efforts working with other states to challenge various proposed regulatory changes that EPD believes will significantly weaken the NSR program. On December 24, 2003, the D.C. Circuit issued a stay enjoining EPA from implementing the most significant regulatory change that it had proposed.
- **Other Interstate Air Pollution Litigation** On April 9, 2004, the D.C. Circuit issued a ruling in two related cases (American Electric Power v. EPA; State of Michigan v. EPA) involving the interstate transport of pollutants that cause smog. The court upheld the efforts of EPA to address these problems through an interstate emissions trading program. The Attorney General led the efforts of northeastern states that had intervened in support of EPA. Together with other states, EPD also submitted an *amicus* brief in support of EPA in Alaska Dept. Environmental Conservation v. EPA, 540 U.S. 461 (2004), a case involving the extent to which EPA could curtail state permitting decisions that it found too lax. The Supreme Court upheld EPA's position by a 5-4 ruling. Finally, EPD submitted comments to EPA challenging certain aspects of the agency's proposed interstate air pollution regulations.

#### ENERGY CONSERVATION

Massachusetts, other northeastern states, and public interest groups obtained a significant ruling from the Second Circuit Court of Appeals overturning the federal Department of Energy's (DOE's) decision to roll back energy efficiency standards that the Department of Energy had set for central air conditioners and heat pumps. NRDC v. Abraham, 355 F.3d 179 (2nd Cir. 2004).

### ENFORCEMENT OF OUR HAZARDOUS AND SOLID WASTE DISPOSAL AND MANAGEMENT LAWS

Under G.L. c. 21E, the Attorney General is charged with the responsibility of recovering Commonwealth funds spent on the clean up of hazardous waste sites. Where possible, EPD enters into settlements with the parties responsible for the contamination in order to obtain their agreement to clean up the site, rather than pursuing a cost-recovery action after the state has stepped in to clean up the contamination. This saves the Commonwealth money upfront, and results in the efficient administration of site clean ups. EPD also enforces our hazardous and solid waste management laws to prevent environmental contamination from occurring in the first place.

- **Starmet** EPD continued its case against Starmet Corp. (formerly known as Nuclear Metals), a company that manufactures armor-piercing bullets and other munitions from spent radioactive fuels at a site in Concord. EPA has placed the site on the National Priority List. While the site itself is contaminated, there are also some 3,800 barrels of radioactive materials that essentially have been abandoned at the site. EPD assisted the state Department of Environmental Protection in finalizing a settlement (that EPD signed as to the a covenant not to sue) under which the Army will agree to fund over \$5 million for the removal of the barrels.
- **MBTA** EPD obtained a consent decree resolving its suit against the MBTA regarding significant lead and arsenic contamination at the Readville Yard. In its complaint, EPD alleged that the MBTA failed to clean up the site despite its statutory liability, and that children were gaining access to the contaminated areas at the site. In the settlement, the MBTA agreed to accept responsibility for a full cleanup, to pay a civil penalty of \$75,000, and to pay response costs of \$80,000. The MBTA also agreed to undertake and implement a full-scale environmental management system designed to change the way it manages its environmental compliance issues.
- **JEMS of New England** EPD alleged that this company failed to comply with DEP orders to provide clean water to a family whose well water was contaminated. In a settlement, the company agreed to pay a \$100,000 penalty.
- **Mendon Road** EPD continues to pursue recovery of costs spent by the state many years ago to clean up coal-related wastes containing a compound known as ferric ferrocyanide. The so-called Mendon Road case was filed several years ago against Narragansett Electric for clean up costs spent by the state, which now total several million dollars, with interest. The First Circuit referred the question of whether ferric ferrocyanide is a hazardous substance under the



Comprehensive Environmental Response, Compensation and Liability Act to EPA, and EPA issued a preliminary ruling that it is. EPD received a favorable administrative ruling from EPA, which the company then appealed. EPD has intervened in that appeal.

- **229 Main St. Limited Partnership** This controversy involves contaminated property owned by 229 Main St. Limited Partnership in Natick. EPD previously won a First Circuit case upholding DEP's right to file a lien on the property after the owner went into bankruptcy. During Fiscal Year 2004, EPD finalized a settlement under which the defendants will complete all remediation at the site. Additionally, the defendants will reimburse the Commonwealth a total of \$272,500, and the Town of Natick a total of \$17,500, for past costs incurred.
- **Boston Junk** In another major 21E action, EPD is seeking recovery of monies being spent to clean up the site of the Boston Convention Center, from Boston Edison and others. In this case, EPD is working closely with the Massachusetts Convention Center Authority and the Boston Redevelopment Authority, co-plaintiffs in the case.
- **Weymouth Neck/Conoco** In an out-of-court settlement, an oil company agreed to pay \$576,000 toward the cleanup of arsenic and lead contamination at Webb State Park.
- **O'Neal Tire Case** This is a case that involves a defendant who abandoned waste tires at various sites in northeastern Massachusetts. The court entered an order prohibiting such violations, and requiring payment of a \$23,750 penalty.
- **D.B. Enterprises** EPD continued its prosecution of owners and operators of a large landfill in the Town of Wendell. EPD is seeking to recover millions of dollars that the DEP spent to stabilize the landfill in order to prevent its catastrophic collapse.
- **Hathaway Braley** This joint federal-state case involves the Atlas Tack superfund site in Fairhaven. Although EPD had previously lodged the Hathaway Braley judgment regarding that entity's share of liability, Atlas Tack, the owner of the contaminated site, moved to intervene in order to challenge the settlement. The court entered the settlement over Atlas Tack's objection.
- **Flaherty** EPD filed suit against developers of a contaminated site in Tyngsborough that were disclaiming liability for the clean up.
- **Hampden Color & Chemical** Creditors of the insolvent former owner of a contaminated site sought to compel DEP to disburse to them funds from a regulation-mandated trust account. EPD prevailed in a decision from the Appeals Court.

### NATURAL RESOURCE RECOVERY, PROTECTION, AND PRESERVATION

- **Natural Resource Damages** Together with the federal government, EPD brought a case against the City of Holyoke Electric Department and others involving coal tar wastes in the Connecticut River. EPD settled the case for \$500,000 for natural resource damage projects in the area.
- **Environmental Review** EPD handles many cases that arise under the Massachusetts Environmental Policy Act (MEPA). In the most significant case, MassPort filed suit seeking to modify a 1976 state court injunction, issued under MEPA, enjoining the Authority from constructing an additional runway at Logan Airport. In the suit, MassPort alleged that modification of the injunction was warranted because the Secretary of Environmental Affairs had certified the environmental impact report for the proposed new runway. Consistent with EPD's position asserted on behalf of the Secretary of Environmental Affairs, the Superior Court ruled that the existing injunctions should be modified to allow MassPort to construct the new runway, but that these injunctions also should be kept in place to require MassPort to conduct certain mitigation measures.
- **Protection of Endangered Species and Plants** In Capolupo v. DEP (Suffolk C.A. 03-1156), EPD obtained an important victory in Superior Court. The Court granted its Rule 12(b) motion to dismiss Capolupo's complaint that sought interlocutory, G.L. c. 30A, review of a DEP order that a development project (near the Merrimack River in Salisbury) triggered the MEPA rare species review threshold because alteration of actual bald eagle habitat may result in a "take" under the Massachusetts Endangered Species Act (MESA). The plaintiff had sought a declaration that there was no jurisdiction for MEPA review because the legislature, in enacting MESA, did not intend that a "take" include "mere habitat alteration."

### WETLANDS, WATERWAYS, AND WATER POLLUTION

Much of EPD's environmental work is done to protect the Commonwealth's water-related resources, including its waterbodies, drinking water, wetlands, and tidelands. The Attorney General brings suit against parties that violate the state laws passed to protect these critical resources.

- **Seawatch** This litigation involves farms in Fairhaven and Westport where rotting clamshells were dumped. EPD reached a settlement with Seawatch (the company that produced the clam shell wastes) that required payment of a \$25,000 penalty. The case is also significant because, at EPD's prodding, Seawatch developed a whole new technology to address the problem.

- **SK Design** This is a wetlands case involving the draining of a pond in Sheffield without compliance with the terms of an approval from the local conservation commission. The settlement included a \$25,000 civil penalty.
- **Hoosac Water Quality District** The Attorney General brings many cases with the federal government against municipal entities that operate publicly-owned treatment works that discharge into waterbodies. During this fiscal year, the court entered a settlement with the City of North Adams, the Town of Williamstown, and the Hoosac Water Quality District that manages sewage treatment for the two municipalities, under which the defendants will take specific steps to prevent future violations, and pay civil penalties totaling \$100,000.
- **Brickyard Marketplace** In a case alleging that an owner of a strip mall in Mashpee installed a large-scale septic system without state approval, EPD obtained a settlement requiring compliance and a \$50,000 penalty.
- **Pearson Landscaping** In a case involving wetlands and solid waste violation in Newbury, the defendant agreed to a \$115,000 penalty, of which \$15,000 can be waived.
- **Wood Recycling** This is a case involving a demolition debris company in Southbury that violated wetlands and air pollution laws in various respects. EPD reached a settlement that requires the payment of a \$425,000 penalty.
- **Quincy** The City of Quincy constructed a coastal revetment without complying with the terms of the wetlands approval that it had obtained. In a settlement, the city agreed to a \$25,000 penalty, half of which can be waived. The city also agreed to undertake a wetlands restoration project.
- **Szczepaniak** In this wetlands case in Lanesborough, EPD obtained an order requiring full restoration and a penalty of \$55,000.
- **Sullivan** EPD prevailed in the Appeals Court in this case in which property owners alleged that state wetlands regulation effected a regulatory taking of their land.
- **Blair** In this case involving unpermitted land alterations that were done in violation of the state Watershed Protection Act, the violator charged that the regulations effected a taking of his property. The Appeals Court ruled in the Commonwealth's favor, and the Supreme Judicial Court denied further appellate review.

- **Coastal Tidelands** The Attorney General also defends the public's rights in coastal tidelands. For example, in Trio Algarvio, Inc. v. Commissioner of DEP, 440 Mass. 94 (2003), EPD obtained an important victory in a tidelands case involving the public trust doctrine. The case involved the Commonwealth's rights to charge tidewater displacement fees and tidelands occupation fees for a private party's use of filled land that lies seaward of the historic low tide line. The Appeals Court had struck down the assessment of both fees. The Supreme Judicial Court upheld one of the fees in its entirety and remanded the second fee for further proceedings.

#### PROTECTION OF PUBLIC CONSERVATION LAND

The Attorney General enforces Article 49 of the Amendments to the State Constitution (as amended by Article 97), which serves to protect public park land and land dedicated to conservation purposes. In this role, EPD became involved in a controversy concerning the Town of Hanson, which sold two parcels of conservation land to private parties. EPD intervened in one case and filed an *amicus* brief in the other.

Together with other states, EPD submitted an *amicus* brief to the U.S. Supreme Court in a case involving the scope of EPA jurisdiction over water pollution matters. South Florida Water Management District v. Miccosukee Tribe, 541 U.S. 95 (2004). The court upheld the position EPD supported — that a federal discharge permit was required where polluted water from one water body was discharged to another water body, regardless of whether any new pollutants were added.

### STATISTICAL SUMMARY

During Fiscal Year 2004, EPD handled enforcement proceedings leading to judgments requiring payments of \$8,661,026.89. This figure is for penalties, cost recovery, and other payments awarded in Fiscal Year 2004, whether or not actually paid in Fiscal Year 2004. It does not include penalties that are subject to waiver if the defendant stays in compliance. In Fiscal Year 2004, EPD received actual payments totaling \$8,031,152.63 in penalties, cost recovery, and other payments. Other cases resulted in court judgments requiring private parties to undertake costly clean ups — a savings of millions of dollars for the Commonwealth.

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

### BROWNFIELDS

Chapter 206 of the Acts of 1998, “An Act Relative to Environmental Clean up and Promoting the Redevelopment of Contaminated Property,” otherwise known as the “Massachusetts Brownfields Act,” encourages the cleanup and redevelopment of Brownfields sites through both liability reforms and financial assistance. One of the liability reforms authorizes the Attorney General to enter into Brownfields Covenants that provide liability relief beyond what is otherwise available under Chapter 21E. The Brownfields Covenant Program addresses site specific liability concerns for complex cleanups and important redevelopment efforts.

Applications for Brownfields Covenants are assessed according to the benefits they create for local communities and the Commonwealth by: 1) creating new, permanent jobs; 2) resulting in affordable housing benefits; 3) preserving historic buildings; 4) creating or revitalizing open space; and/or 5) providing some other public benefit to the community in which the site is located.

In Fiscal Year 2004, EPD’s Brownfields Unit continued to work on a number of diverse cleanup and redevelopment projects throughout the Commonwealth. The Brownfields Unit considered several applications for Brownfields Covenants and finalized four Agreements designed to promote cleanup and reuse projects in Lynn, Burlington, New Bedford, and Lowell. The Brownfields Unit has continued its ongoing efforts on various long-term priority projects and also has continued to solicit new projects through outreach and education.

### BROWNFIELDS AGREEMENTS FINALIZED

- **395 Lynnway Project — Lynn** In August 2003, EPD entered into a Brownfields Covenant that will result in the clean up and reuse of idled property located at 395 Lynnway, Lynn. This project involves a 104,000-square-foot building for commercial uses that will result in the preservation of 12 existing jobs and the creation of 12 to 16 new jobs.
- **Filter Sales — Burlington** In November 2003, EPD finalized a Brownfields Covenant Not to Sue Agreement with Filter Sales, Inc. for the reuse of a vacant former manufacturing facility located at 15 Adams Street at the junction of Routes 3 and 128 in Burlington. Filter Sales, Inc. will be relocating its air filter manufacturing operations to Burlington, and expects to create 30 to 40 new, permanent jobs. It will also sell its former Charlestown facility, giving rise to a potential net gain of 20 new permanent jobs at that location.

- **Riverside Avenue Project (former Cliftex Building) — New Bedford** In January 2004, EPD finalized a Brownfields Covenant Not to Sue Agreement with Norseman Properties, LLC to clean up and renovate the former Cliftex building, a 100-year-old, 300,000-square-foot mill building, in New Bedford. The new owner plans to renovate the building so that it is suitable for several businesses, such as a regional trucking operation, a surplus equipment supplier, warehouses and/or storage facilities, and a national-brand clothing manufacturer. This project will result in the creation of 75 to 85 new, permanent jobs and will retain 125 to 155 current jobs.
- **Manchester Street Project (Part 2) – Lowell** In February 2004, EPD entered into a second Brownfields Covenant to promote the expansion of the Manchester Street project in Lowell. This project will result in additional housing units, including more affordable housing opportunities.

#### OTHER ACTIVE BROWNFIELDS PROJECTS

EPD was actively involved in many different other brownfields projects this year, some of which have submitted draft or final applications.

- **North Andover — Lucent Site** This project involves the conversion of the former Lucent site into a multi-use office/research and development park that will create new, permanent jobs for the Merrimack Valley region.
- **Westborough — Westborough Commons Project** A developer is interested in revitalizing the former Tyrolit manufacturing facility into a vibrant community-oriented shopping center that will create 750 new jobs, provide tax revenue from retail stores, and protect two areas of public open space.
- **Pittsfield — Colonial Theatre Restoration Project** A local theater association is interested in purchasing property that abuts a historically significant theatre for a restoration/expansion project.
- **Attleboro — Swank Property** The Attleboro Redevelopment Authority is facilitating the expansion of the operations of a large jewelry manufacturer to create 500 new jobs.
- **GenCorp./Lawrence Gateway Project — Lawrence** One of the Brownfields Unit's long-term priority efforts is the Gateway area of Lawrence. The redevelopment of the GenCorp site into parking, and the abutting Oxford Paper site into a park and an open space recreation area

will be catalysts for revitalization of the Gateway area — inspiring new development, increased occupancy and use in existing mill buildings — and expansion of Lawrence General Hospital services. This project would create hundreds of jobs and spur economic development of the Gateway area and much of the mill area, creating significant public benefits to Greater Lawrence. In Fiscal Year 2004, the Brownfields Unit continued to participate in regular Gateway meetings convened to provide constant momentum to move the GenCorp and Oxford Paper projects forward. EPD also promoted and facilitated the formation of an entity to assume operation and management responsibilities of hundreds of parking spaces on the GenCorp site that could be used by abutting mill owners by 2004. EPD also advocated for near-term parking spaces on appropriate portions of the GenCorp site. GenCorp has submitted a draft application for EPD's consideration.

- **Rail Yard — New Bedford** Another of the long-term priority brownfields efforts is the New Bedford Redevelopment Authority project involving the conversion of the 30-acre New Bedford rail yard into a multi-use intermodal transit area. In Fiscal Year 2004, EPD worked with City of New Bedford officials to provide assistance so that the project's liability issues will be addressed.

- **BFI/Decor Project — Whitman** A current tenant with an existing business forms company is interested in completing the cleanup and expanding paper manufacturing operations (creating approximately 30 new jobs), but has liability concerns associated with these efforts.

- **South Shore Tri-Town Development Project (Former Weymouth Naval Station) — Weymouth, Rockland, and Abington** This project will clean up and redevelop 1,400 acres of land at the former Weymouth Naval Station located in the towns of Weymouth, Rockland, and Abington. Portions of the property have been or will be transferred to South Shore Tri-Town Development Corporation and a private developer.

- **Brooks Park Project — Lawrence** Lawrence Community Works is interested in purchasing a site in the North Common neighborhood of Lawrence that was formerly occupied by dry cleaning operations. During Fiscal Year 2004, the Brownfields Unit worked with the parties to facilitate site assessment activities in order to complete the appropriate response actions for use as a park.

- **Revere Copper and Brass Site — Plymouth** The Plymouth Redevelopment Authority is pursuing the cleanup and redevelopment of a 1.5-acre site formerly operated by the Revere Copper and Brass Company.



### BROWNFIELDS PROGRAM DEVELOPMENT

Throughout Fiscal Year 2004, EPD explored cleanup and redevelopment opportunities with a variety of prospective developers. These redevelopment projects could lead to the creation of new jobs across the Commonwealth, involving significant tracts of land and commercial space as well as the creation of affordable housing and open space.

In many instances, this Office has encouraged cleanup and redevelopment projects to proceed by providing interested parties with an understanding of the liability relief available under the statute. It is sometimes the case that a Brownfields Covenant is not necessary for a project to proceed. A large percentage of the cleanup and redevelopment projects that the Brownfields Unit has been involved with are long-term by nature, and with complexities that ultimately give rise to the need for a Covenant. In those cases where the clean up is complex, the liability is potentially substantial, and the redevelopment opportunity may be of great significance to the economic viability of a community. A Brownfields Covenant is often a critical component of the transaction. Fiscal Year 2004 continued to highlight the important role that the Brownfields Covenant Program plays in both public and private efforts to transform brownfields properties throughout the Commonwealth.

### LEAD PAINT

The presence of lead-based paint in our state's older housing stock means that children in Massachusetts face a heightened risk of lead poisoning. Massachusetts' lead-based paint notification and abatement law, one of the nation's strongest, requires the deleading or interim control of lead hazards existing in homes built before 1978 where children under six are living. Owners are also required to notify tenants that a property has not been delead, regardless of whether a child under the age of six is living in the home.

During Fiscal Year 2004, Massachusetts continued a lead paint enforcement initiative in cooperation with the EPA and the U.S. Department of Housing and Urban Development (HUD). The initiative seeks to enforce the state law requiring disclosure of lead hazards and the abatement of lead paint with enforcement of the federal disclosure requirements. EPD's actions are part of a larger Public Protection Bureau initiative that will potentially include civil rights actions against landlords who seek to evade the lead law by refusing to rent to families with small children, and enforcement actions against unlicensed lead abatement contractors.

### ENVIRONMENTAL HEALTH AND SAFETY IN THE SCHOOLS

Consistent with Attorney General Reilly's priority on safe schools, EPD participated in numerous initiatives to address environmental health and safety concerns in Massachusetts' public schools, especially

indoor air quality. Attorney General Reilly has advocated for schools to adopt Environmental Management Systems to address their environmental compliance issues on an ongoing basis.

During Fiscal Year 2004, EPD continued to work with community groups and other state agencies to identify the common environmental health and safety issues in the schools, the challenges the schools face in addressing those issues, and the gaps in the laws and regulations on such issues. EPD is currently working with several members of the Healthy School Council to develop legislation to address environmental health and safety issues in the schools.

#### PROTECTING CONSUMERS FROM EXPOSURE TO ASBESTOS, TOXICS, AND PESTICIDES

Massachusetts has a long-standing commitment to reducing human exposure to harmful substances, such as asbestos, toxics, and pesticides.

- **Massachusetts Innovation Center** As part of our continuing enforcement initiative against asbestos abatement contractors and owners/operators of facilities where improper removal of asbestos has resulted in the release of asbestos into the environment, EPD brought an enforcement suit against a Fitchburg company for asbestos violations that allegedly occurred during a renovation project at the firm's facility. EPD obtained a settlement that included a \$95,000 penalty.

- **High Ridge** A Clean State case against the Division of Fisheries and Wildlife for asbestos violations at a site in Westminster. EPD settled the case for a \$50,000 penalty, half of which is waivable if the agency stays in compliance.

- **Pesticides and Public Housing** Together with other states, EPD filed a rulemaking petition with the federal Department of Housing and Urban Development requesting the agency to require public housing authorities to mandate the use of "integrated pesticide management" to reduce exposure of public housing residents to toxic substances.

#### THE CLEAN STATE INITIATIVE

A top priority of the Attorney General is compliance, by all state agencies and authorities, with the environmental laws and regulations of the Commonwealth. During Fiscal Year 2004, the Attorney General pursued various enforcement cases against state entities. These cases included his prosecution of the MBTA for its failure to complete a cleanup of a site in Readville contaminated with lead and arsenic, and a case against the Department of Fisheries, Wildlife and Environmental Law Enforcement involving asbestos violations at a site in Westminster. In addition to prosecuting individual cases against state entities, the Attorney General seeks to have state agencies implement policies to prevent environmental violations from occurring. During this fiscal year, EPD monitored these state agency efforts.

### CAPE WIND

In November 2001, Cape Wind Associates filed an application with the Army Corps of Engineers for a permit in conjunction with a proposal to build a “wind farm” on Horseshoe Shoals in Nantucket Sound. The proposal envisioned 170 (since scaled down to 130) wind turbine generators on pylons standing approximately 260 feet above sea level, spread over 28 square miles of the Sound. Horseshoe Shoals is located in the center of the Sound, more than three miles beyond the coastline and closing lines, and therefore outside of Massachusetts’ territorial waters.

Although federal law establishes a comprehensive scheme for licensing areas of the seabed on the continental shelf for mineral exploration and extraction, including oil and gas, there is no such scheme applicable to other sorts of projects on the continental shelf. The developer of the proposed wind farm appears to take the position that in these circumstances a permit from the Army Corps will suffice to authorize the project.

The Attorney General has concluded that this position poses a substantial threat to the public interest and public rights in the Sound and elsewhere along the Massachusetts coast. Quite apart from the particular proposal, the developer’s line of reasoning could ignite a “land rush” off the coast by developers with all sorts of projects. In this way, the rights of the public generally would be appropriated for private gain with very little control as to siting and permissible uses, and without compensation to the public for the loss. In the Attorney General’s opinion, the immediate proposal well illustrates the problem, because it would site a massive industrial installation in the middle of a body of water cherished by millions for its aesthetic and recreational values and for its contribution to the livelihoods of fishermen and of coastal towns.

Accordingly, in Fiscal Year 2004, the Attorney General continued to raise these concerns in many different forums. For example, the Attorney General submitted an *amicus* brief in Alliance to Protect Nantucket Sound, Inc. v. United States Department of the Army, et al., No. 03-2604 (1st Cir.), arguing that a permit issued by the Army Corps of Engineers pursuant to the Rivers and Harbors Act does not provide sufficient authority to allow a private party to occupy federal public trust lands.

### BUZZARD’S BAY OIL SPILL

In 2003, a barge owned by Bouchard Transportation spilled approximately 50,000 gallons of oil into Buzzard’s Bay. EPD has been assisting the state and federal Natural Resource Trustees to ensure that natural resource damage issues are adequately addressed.

### LEGISLATIVE EFFORTS

During Fiscal Year 2004, much of EPD's legislative work was in fighting efforts by the U.S. Department of Defense (DOD) to secure additional exemptions from federal environmental laws. For example, in congressional testimony he submitted opposing such efforts, the Attorney General pointed out that historically DOD has been one of the worst environmental violators and that the major federal environmental laws already provide DOD with sufficient flexibility to ensure that environmental compliance will not compromise military readiness.

On the state side, EPD fought for legislation filed by Attorney General Reilly and Senator Brewer that would create a statute of limitations for cases brought to enforce the state's cleanup statute, G.L. c. 21E. The proposed statute would key the statute of limitations to the discovery of the violation instead of to its occurrence, which is a change that EPD believes is important for preserving the integrity of the largely-privatized state cleanup program.

### NUCLEAR SAFETY ISSUES

EPD joined an *amicus* brief in a case pending in the Ninth Circuit Court of Appeals that involved the Nuclear Regulatory Commission's (NRC's) efforts to keep issues related to terrorism out of licensing decisions. EPD also submitted an *amicus* brief (joined by four other states) to the First Circuit in a case challenging NRC's efforts to limit public participation in nuclear power plant licensing proceedings. Finally, EPD sent a letter to the National Academy of Science regarding its review of certain nuclear safety issues.

## **INSURANCE DIVISION**

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The Insurance Division represents the public interest in administrative insurance rate-setting proceedings, brings actions in state court against insurers for unfair acts and practices, provides comments and testimony regarding proposed regulations and laws relating to insurance, assists in other litigation in the Public Protection Bureau, mediates claims on behalf of consumers, and provides assistance on insurance and other issues to members of the Massachusetts elder community.

The Insurance Division included Glenn Kaplan, Chief; Stacy Book; Gerald Cahill; Gerald D'Avolio; Judy dePontbriand; Michael Dunn; Barbara Fain; Burt Feinberg; Maureen Forbes; Rebecca Frade; Stacey Gotham; Maureen Hensley-Quinn; Hilary Hershman; Tonie Jhun; Shannon Keith; Peter Leight; Pamela Meister; Tom O'Brien; Mary Jane Preskenis; Katie Rhodes; Jayna Stafford; and Rachel Weiner.

## SIGNIFICANT CASE SUMMARIES

### RATE CASE LITIGATION

Insurance rate proceedings involve highly complex litigation, with hundreds of millions of dollars in customer premiums at issue. The Insurance Division, with its attorneys, support staff, and in-house actuarial and mathematical experts, reviews industry filings and intervenes in rate cases to prevent unfair rate increases. The Attorney General's Office, as the only party in the rate cases representing the public interest in fair rates for consumers, and as the only party able to appeal unjustified rate increases approved by the Commissioner of Insurance, plays a key role in this process.

- **2004 Automobile Insurance Rate Proceeding** The automobile insurance rate-setting proceeding is an annual administrative litigation in which the Commissioner of Insurance, based on proposals and evidence submitted by the auto industry and other parties, sets automobile insurance rates for the coming year. The Insurance Division litigates these proceedings, representing the public interest. The division completed its administrative litigation against the industry's requested 12% rate hike, and the Commissioner issued a decision raising rates by 2.5%. Although the litigation was largely successful (the decision was almost \$400 million less than the industry requested), the division sought to further improve the result for consumers by appealing the 2.5% rate increase.
- **2004 Workers Compensation Insurance Rate Proceeding** Workers Compensation Insurance is a mandatory insurance coverage for Massachusetts companies that pays claims for job-related injuries, and costs Massachusetts businesses over a billion in premiums each year. The rates for workers compensation insurance are set in a cyclical administrative rate proceeding. For the first time in over 20 years, the Attorney General intervened in this proceeding and identified several major errors in the industry's filing that would otherwise have gone unnoticed. The division's cross-examination of industry witnesses, and proffer of evidence demonstrating the excessiveness of even the existing workers compensation insurance rates, resulted in a rate rollback and saved small and medium businesses in Massachusetts over \$148 million.
- **Blue Cross/Medex Medicare Supplement Insurance Rate Proceeding** Blue Cross, the largest provider of Medicare Supplement Insurance (insurance that covers the exclusions and gaps in Medicare) in Massachusetts, filed for a double-digit rate increase with the Division of Insurance. Intervention in this litigation by the Insurance Division resulted in a savings to consumers of over \$11 million.

- **Hartford Medicare Supplement Insurance Rate Case** Hartford Insurance Company provides Medicare Supplement insurance to approximately 1,000 residents in the Commonwealth. Rates for this coverage are approved in an administrative docket before the Commissioner of Insurance. Hartford filed seeking a 23% rate increase for one of its types of policies. Intervention by the Insurance Division resulted in savings to consumers of over \$100,000.
- **Bankers Life Medicare Supplement Insurance Rate Case** Bankers Life is another Medicare Supplement insurer in the Commonwealth. This fiscal year Bankers Life filed for rate increases ranging up to 35% on various Medicare Supplement insurance plans it offered. Intervention by the Insurance Division resulted in savings to Massachusetts seniors of almost \$800,000.
- **FAIR Plan (Homeowner Insurance) Rate Case** The FAIR Plan provides homeowners insurance to consumers who cannot obtain coverage from private insurers. Rates for this residual market plan are set in a cyclical rate proceeding. The industry filed this year for a proposed rate increase of 4%. The division intervened, and its actions saved Massachusetts consumers over \$1 million in home insurance premiums, and resulted in a rate rollback for FAIR Plan policyholders in much of the City of Boston.

#### SUFFOLK SUPERIOR COURT LITIGATION: INSURANCE ISSUES

In addition to the rate-setting cases, the Insurance Division aggressively pursues insurers, insurance agents, and other participants in the insurance system when they commit unfair acts and practices.

- **In re MetLife Insurance Co.** MetLife, a New York-based insurer, misled Massachusetts consumers about the financial benefits of certain life insurance-based products. The division obtained an Assurance of Discontinuance against MetLife, requiring changes in its policies, restitution, and a \$150,000 payment to the Commonwealth.
- **Commonwealth v. Guardian Life** The Insurance Division investigated allegations that Guardian Life Insurance Company of America, a health insurer, failed to pay properly health insurance claims for ambulance services. The division filed suit and obtained a Judgment including \$53,000 in consumer restitution and \$45,000 in penalties.
- **Commonwealth v. Creative Solutions Group, Inc.** This insurance broker provided inaccurate deductible and related dental policy limit information to certain consumers. The division obtained an Assurance of Discontinuance, including full consumer restitution, injunctive relief, and a statutory penalty.

- **Commonwealth v. Electric Insurance Co.** The division reviewed allegations that Electric Insurance Co. (Electric) violated state law by refusing to provide homeowners insurance to consumers based on their unmarried status. The division obtained a Judgment for \$35,000 in penalties, and injunctive relief requiring Electric to contact the relevant consumers and offer them insurance as well as any related restitution.
- **Commonwealth v. Beech Street Corp.** Beech Street Corp. (Beech Street) is a Preferred Provider Organization (PPO) purporting to offer an expansive health benefits provider network. Potential purchasers raised concerns regarding the accuracy of Beech Street's promotional materials. Beech Street agreed to an Assurance of Discontinuance under which it would correct any misimpressions among its customers, prospectively change its marketing and recredentialing practices, and pay \$15,000 to the Commonwealth.
- **Commonwealth v. United Healthcare Insurance Co.** United Healthcare Insurance Co. (United Healthcare), a health insurance company, allegedly failed to pay for ancillary services on pre-approved surgical procedures (i.e., United would pay fully for the surgery but not the anesthesia). The Insurance Division filed an Assurance of Discontinuance in Suffolk Superior Court, obligating United Healthcare to make changes to its practices, pay outstanding claims, and pay a \$15,000 penalty.
- **Commonwealth v. American Heritage Life** American Heritage Life, a credit disability insurance provider, failed to provide adequate disclosure, as required by regulation, relating to termination options available under its policies. The Insurance Division obtained a judgment against the company including injunctive relief and a penalty of \$25,500.
- **In re Long Term Care Insurance Agents** Long Term Care insurance provides monies to consumers when they no longer are able to care for themselves and need either nursing home or other living assistance. Long Term Care insurance brokers are required to provide certain disclosures and information regarding this complex coverage to potential purchasers. The Insurance Division filed Assurances of Discontinuance in Suffolk Superior Court requiring three Long Term Care brokers — Clower Insurance & Financial Strategies, Inc., Eisenberg Associates, and Ronald P. Miles Insurance Agency — to change their business practices and pay a penalty under the Consumer Protection Act, G.L. c. 93A. Each had failed to provide appropriate disclosures when visited by Office of the Attorney General investigators as part of a sting operation.



- **Commonwealth v. Universal Benefit Plans, Inc.** Universal Benefit Plans, Inc. failed to disclose properly that its discount plan for dental services was not insurance (and thus was not subject to the consumer protections available to insurance purchasers). The division resolved this matter with an Assurance of Discontinuance that required changes in Universal Benefit Plans, Inc.'s future marketing efforts, restitution to consumers, and a statutory penalty.

## STATISTICAL SUMMARY

Investigations initiated	61
Penalties Imposed	\$ 1,975,000 <sup>2</sup>
Restitution and Monetary Savings for Consumers	\$ 542 million

The division includes two mediation projects, the Insurance Mediation Program and the AG Elder Hotline, that help consumers resolve certain individual disputes without legal action.

<u>MEDIATION PROGRAMS</u>	<u>CONSUMER CALLS</u>	<u>MEDIATIONS/ COMPLAINTS</u>	<u>ASSISTED RECOVERIES<sup>3</sup></u>
Insurance Mediation	7,413	932	\$ 1,422,729
AG Elder	8,400	4,674	\$ 167,000

## SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

### PUBLIC POLICY INITIATIVES

In addition to enforcing existing statutes, the Insurance Division is active in exploring various public policy issues. The division advocates regarding potential legislative changes and proposed regulations. It also performs important research and analysis regarding the actual effect of various trends and systems on the insurance market and on consumers. These data, and the conclusions drawn from them, are useful for public policy debate surrounding insurance issues.

<sup>2</sup>This figure includes cases conducted jointly with other divisions, such as the Microsoft case, the Internet ammunition sting cases, and the Pharmacy Assessment matters.

<sup>3</sup>These monetary recoveries are included in the total Restitution and Monetary Savings for Consumers.

**Credit Scoring for Insurance** Credit scores are numerical values, computed from past credit histories and other data, that purportedly reflect the likelihood that a consumer will pay his or her bills on time. Many insurance companies believe that credit scores also predict how likely a consumer is to submit an insurance claim (i.e., request reimbursement from an insurer for damage to a house or car). These insurers advocate the use of credit scores for determining whether to offer insurance to individuals and how much to charge for it. Following a call by insurers for broader use of credit scoring, the Commissioner of Insurance drafted regulations that would have allowed the use of credit scoring for setting individual consumer insurance rates. The Insurance Division testified at a public hearing, detailing the problems both with the regulations and with the use of credit scoring for rating purposes. After the hearing, the Commissioner withdrew the regulations.

**Auto Insurance Residual Market Reform** In Fiscal Year 2004, the division continued its efforts to have the Commissioner of Insurance reform the way in which consumers obtain auto insurance when they cannot obtain coverage from insurers voluntarily (often referred to as the “auto residual market system”). The division previously had provided the Commissioner with data demonstrating that the current system perpetuates fraud, results in unpredictable and inequitable divisions of losses among existing carriers, and fails to protect consumers.

**Merit Rating Board** This board considers how automobile accidents and driving records are used to assign consumers to certain “safe driver” categories for auto insurance purposes. The board, which meets quarterly, includes representatives of the Attorney General’s Office, the Registrar of Motor Vehicles, and the Commissioner of Insurance. The Insurance Division represents the Attorney General on this board. The division continued to participate on the board and worked toward improving the functioning of the “merit rating” system for Massachusetts drivers.

**Managed Care Oversight Board Advisory Committee** This committee advises the Executive Office of Health and Human Services regarding certain health insurance and health care regulations. The Insurance Division attends meetings of the Advisory Committee and monitors its activities. The division continued to attend these meetings, and offered board members the Office’s views on a variety of regulatory issues.

**Testimony and Legislative Guidance** The division also provides testimony at administrative public hearings and before the legislature regarding regulatory initiatives and changes in insurance law. The division provided guidance to legislators on a number of issues, including auto insurance reform, credit scoring, homeowners insurance, possible health insurance protections for consumers whose companies close employment facilities, and workers compensation insurance. In addition, the Governor asked the Attorney General’s Office to join his Auto Insurance Reform Task Force, and division staff began

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participating in weekly Task Force meetings aimed at exploring various options for auto insurance reform.

ASSISTING WITH THE ATTORNEY GENERAL'S  
GENERAL CONSUMER PROTECTION MISSION

- **Pharmacy Assessment Cases** The major pharmacy chains in the Commonwealth, in an attempt to pass along to consumers costs relating to new licensing fees, misled consumers regarding the nature of these licensing expenses. The pharmacies wrongly told consumers that the charges were a new “tax” on consumers and that consumers were obligated to pay the such charges under their HMO and health insurance coverage. The Insurance Division worked jointly with the Consumer Protection and Antitrust Division to bring legal action against the pharmacy chains. The division’s efforts resulted in the filing of Assurances of Discontinuance with the major chains, including Walgreens Company; Wal-Mart Stores, Inc.; CVS Pharmacy, Inc.; Brooks Pharmacy; and Stop & Shop Supermarkets. The companies agreed to provide full restitution to consumers, change their practices prospectively, and pay \$570,000 in aggregate penalties to the Commonwealth.
- **Massachusetts v. Microsoft** The Attorney General sued Microsoft under state and federal antitrust statutes, winning on liability. The Office continued to litigate remaining open aspects of this case, including the right to recover attorneys’ fees and costs against Microsoft, and obtained a judgment for \$1 million in attorneys’ fees. The Insurance Division also played a key role in the Attorney General’s continuing efforts against Microsoft, including investigating potential violations of the existing remedial decree, filing status reports with the District Court regarding Microsoft’s behavior, and pursuing an appeal to the D.C. Circuit seeking strengthened injunctive relief against the company’s future predatory actions.
- **Commonwealth v. Allied Home Mortgage Capital Corp.** Allied Home Mortgage Capital Corp. (Allied), a national mortgage company with a significant presence in Massachusetts, violated state and federal law in its use of pre-recorded telemarketing messages. In a joint effort with the Consumer Protection and Antitrust Division, the Insurance Division filed suit against Allied and resolved the matter by Consent Judgment. Under the Judgment, the company is subject to injunctive provisions that require the alteration of its business conduct and a payment of \$65,000 to the Commonwealth.
- **Internet Ammo Dealers** Following allegations that certain Internet ammunition dealers had been selling ammunition illegally to Commonwealth residents, the Insurance Division, in

conjunction with the Consumer Protection Division and the Investigations Division, oversaw a sting operation to review Internet ammunition dealer practices. The sting operation and its resulting court cases shut down the illegal ammunition sales channels of five internet ammunition dealer operations: Discount Distributors, Inc.; Midway Arms, Inc.; Advanced International Marketing, Inc.; Cascade Ammunition, Inc.; and Kiesler Police Supply and Ammunition Company. The division's judgments barred the unlicensed sites from selling ammunition into Massachusetts, and imposed penalties against the perpetrators. The Insurance Division also separately brought suit against The Ammobank, another Internet ammo dealer, for unlawful ammunition sales, and litigated this matter during the past fiscal year.

- **Commonwealth v. European Health Concepts** European Health Concepts, a Florida company selling magnetic mattress pads and seat cushions through presentations aimed at senior citizens, failed to honor its "no-risk" money-back warranty on products sold to Massachusetts consumers. The Insurance Division filed suit and obtained a judgment including injunctive relief, an award of \$32,000 in restitution, and civil penalties of \$27,000.
- **Microsoft Passport** Microsoft recently began offering an authentication system product to consumers. The system, called Passport, allows users to communicate with Web sites in an allegedly more secure fashion and provides a mechanism for Web sites to recognize consumers (without those consumers needing to re-enter their personal information). Massachusetts (CPAD and the Insurance Division) reviewed Microsoft's claims regarding Passport's security as a lead state on a multi-state investigatory group. After the states raised various concerns with Microsoft, the company agreed to make changes to its privacy policy and its marketing claims regarding Passport.

#### CONSUMER MEDIATION

**Insurance Mediation Services** In Fiscal Year 2004, 7,413 people, an average of 618 a month, called the Insurance Division's Insurance Mediation Program to ask questions and seek help with insurance problems. Some 47% of the callers each month were concerned about health insurance issues. Many of these callers had recently been laid off from their jobs and did not know their health insurance rights. Additionally, many small business owners contacted the Insurance Division to ask questions about their responsibilities under Massachusetts mini-COBRA that allows consumers to continue health insurance coverage in certain situations after they have lost their jobs.

Approximately 23% of the callers sought help with auto insurance problems. Most callers were having difficulty with accident claims; others raised questions about premium billing, cancellations, and surcharges.

In addition to the consistently high volume of calls related to health and automobile insurance, the mediation program received inquiries related to a wide range of other types of insurance, including short- and long-term disability, life insurance and annuities, travel insurance, credit insurance, and possible insurance scams. Callers asked questions about how to evaluate insurance before purchasing a policy; how to cancel unwanted insurance; how to appeal a denied claim; and how to deal with incorrect billing.

The Insurance Division mediators, assisted by undergraduate interns trained by the Insurance Division, answered the callers' questions, providing information, guidance, and referrals, and, when appropriate, sending consumer complaint forms. The Insurance Division opened 932 consumer complaint files, the majority of which were submitted on consumer complaint forms or as letters to the division. As with the telephone inquiries, a significant portion of the written complaints related to health insurance. Four hundred and nineteen of the new complaints, 45% of the total, involved health insurance. The top six health insurance complaint categories were claim denials (90), billing problems (76), mini-COBRA problems (40), misleading sales (38), disability claims (32), and employer's failure to remit health insurance premiums (25).

Insurance Division mediators closed 1,102 consumer complaint files and recovered \$1,422,729.20 for Massachusetts consumers.

**AG Elder Hotline** Through the Attorney General's Elder Hotline (1-888-AG ELDER), the Insurance Division provides a central place where senior citizens, aged 60 and older, and their families can call for assistance on insurance issues and other consumer matters. The AG Elder project provides written and oral information, referrals within the Attorney General's Office or to other government agencies, and mediation services. AG Elder received more than 8,400 calls from consumers and opened intakes on 4,674 elders. This amount represents an increase of approximately 25% in the number of elderly citizens served in Fiscal Year 2003. In addition, money consumers saved through mediation was over \$167,000, an increase of approximately \$60,000 over the last fiscal year.

Health insurance remains a top area of concern for callers to the hotline, with over 400 consumers calling with complaints relating to coverage. Other significant areas of concern included automobile issues, home improvement contractor complaints, other retail issues, telemarketing, and credit card/

debt issues. AG Elder also processed a significant number of complaints regarding utilities (200), health care providers (150), and senior/assisted-living facilities (150).

Despite consistency in the top categories of complaints between Fiscal Years 2003 and 2004, there have been emerging areas of concern as well. These areas include allegations of unauthorized electronic withdrawals from elders' bank accounts; reports of seniors being victims or near-victims of fraudulent sweepstakes, lotteries, and other scams (despite widespread educational efforts to stave off victimization); and a growing awareness and concern among elders about identity theft. Finally, calls to the AG Elder project indicate an apparent growth in unmanageable credit card debt, especially among the most vulnerable elders. In order to more accurately capture the nature of the complaints that are brought to our attention, the Insurance Division is in the process of revising the AG Elder database to allow for closer trend analysis in Fiscal Year 2005.

#### HOSPITAL AND HMO COMMUNITY BENEFITS

Division staff oversee the Attorney General's Community Benefits Guidelines for hospitals and HMOs, including the Attorney General's Community Benefits Advisory Task Force. The Advisory Task Force includes representatives of hospitals, HMOs, community health advocacy groups, and relevant state agencies. It is organized into several working groups that focus on the key elements of community benefits, including reporting and community engagement.

#### ELDER PROTECTION UNIT

The Elder Protection Unit seeks to enhance protections for Massachusetts elders by improving the coordination and monitoring of elder issues, including the Office's outreach efforts as well as its response to matters involving elder abuse and fraud. The unit draws on the talents of staff throughout the Office.

The unit convened an internal steering committee to create the policy agenda for elder issues within the Office. The committee consists of division chiefs or bureau chiefs as well as other representatives with substantive jurisdiction over elder cases and matters. The steering committee meets on a quarterly basis.

The unit also coordinated two half-day elder issue trainings attended by 25 assistant attorneys general, investigators, mediators, administrative assistants, and others. The attendees, who received the designation "elder advocates," agreed to handle appropriate elder matters in addition to their core duties.

Unit staff trained municipal police cadets on elder fraud and abuse.

Unit staff conducted outreach to elders and elder providers on telemarketing, financial fraud, charity fraud, and identity theft. Staff provided information at different events around the Commonwealth. These events were mostly speaking engagements at eight different sites where seniors live or gather, including assisted-living facilities, senior centers, hospitals, colleges, and community groups, but also included staffing information tables at the annual conference of the Massachusetts Councils on Aging.

Staff also served as representatives on various elder advisory boards, including the Massachusetts District Attorney's Association's Elders and Persons with Disabilities Sub-Committee, Massachusetts End of Life Commission, and Boston Partnership for Elder Adults.

**Elder Abuse Grant Project** In late 2002, the Attorney General's Office was awarded a 24-month Office on Violence Against Women, U.S. Department of Justice training grant to establish an interdisciplinary initiative designed to improve the capacity of prosecutors, law enforcement, and elder service and domestic violence professionals to recognize, investigate, and prosecute abuse perpetrated against older individuals.

Project staff, including an AAG Project Director, a grant-funded Project Manager, and a grant-funded Project Coordinator, worked with a multi-disciplinary Steering Committee, which met on a bi-monthly basis to develop conference curricula and help direct project goals. Additional assistance was provided by CPAD, the AG Elder Hotline, the Criminal Bureau's Criminal Justice Policy Division, and the Business and Labor Protection Bureau's Medicaid Fraud Control Unit.

With assistance from the Steering Committee, the Office held a statewide conference on elder abuse as well as advanced training sessions on financial exploitation, elder domestic violence, and sexual assault.

- March 24, 2004 — One all-day conference Beyond the Basics: Strategies to Combat Elder Abuse in Worcester. Topics included a national perspective on handling elder abuse, the Massachusetts landscape, interviewing techniques, physical and forensic markers, and pitfalls in prosecuting elder abuse. Approximately 380 professionals attended the conference, including police, prosecutors, elder service providers, and domestic violence advocates.
- May 20 & 21, 2004 — Two half-day advanced sessions Beyond the Basics: Strategies to Combat Elder Financial Exploitation, held in Sturbridge and Hyannis. This conference included information on the misuse of legal documents designed to help elders (e.g., powers of attorney, joint bank accounts) as well as how to investigate and prosecute a document-intensive case. Approximately 210 professionals attended this training.



- June 16, 2004 — One half-day advanced session Beyond the Basics: Strategies to Combat Elder Domestic Violence and Sexual Assault in Worcester. This conference provided information on the signs and symptoms of elder domestic violence and sexual assault, forensic markers, reporting and safety issues, and responding to batterers, as well as breakout groups on working with the criminal justice system, law enforcement, and elder protection and domestic violence programs. Approximately 170 professionals attended this session.

In December 2003, the Office issued requests for proposals, soliciting bids to produce *At the Hands of Others: Elder Domestic Violence and Sexual Assault in Massachusetts*, a 15-minute police roll call video on elder domestic violence and sexual abuse. The producer conducted interviews and developed a script, which was submitted to the U.S. Department of Justice for approval. The video will be closed-captioned and released to law enforcement in Fiscal Year 2005.

**The Bank Reporting Project** The Bank Reporting Project is a public/private partnership to train bank personnel to recognize, report, and prevent the financial exploitation of elders. This project is a collaborative effort among the Attorney General's Office, the Massachusetts Bankers Association, the Division of Banks, the Executive Office of Elder Affairs, and members of the private financial community. The partnership held a series of six trainings throughout the Commonwealth.

**The Attorney General's 2004 Elder Fraud Alert Calendar** One of the recommendations made by the internal steering committee was to better provide elder consumers with fraud prevention information. The committee developed a calendar that covered a variety of scams, including foreign lotteries, home improvement, health, life and annuity scams, Internet, identity theft, and charities fraud. The Office distributed 10,000 calendars to law enforcement, elder groups, and individual consumers, and also posted the calendar on its Web site.

## INVESTIGATIONS DIVISION ---

The Investigations Division conducts investigations primarily for divisions within the Public Protection and Government Bureaus. In addition, the division also investigates cases or matters on occasion for the Executive Bureau, or in conjunction with the Criminal Bureau.

Division investigators locate and interview victims, witnesses, and subjects; obtain and review documentary evidence from numerous sources, including individuals, corporations, and federal, state, county, and municipal agencies; conduct surveillance, background checks, and asset checks; analyze

financial records and perform other forensic accounting functions; and testify before grand juries and at trial. In some cases investigators worked closely with other state attorneys general, district attorneys, local and state police departments, the U.S. Attorney's Office, the U.S. Postal Inspection Service, the Federal Bureau of Investigation, and the Federal Trade Commission.

The Investigations Division included Quinton Dale, Director; Dante Annicelli; Monique Cascarano; Todd Davis; Ashley Dizel; Jim Gentile; Mary H. Marshall; Nozomi Murakami; Nicholas Paras; Lou Russo; and Nancy Ward.

## **SIGNIFICANT CASE SUMMARIES**

The division initiated 238 investigations in the following major areas:

### **CIVIL RIGHTS AND CIVIL LIBERTIES**

The division investigated hate crimes, allegations of police misconduct and other violations of the Massachusetts Civil Rights Act. Investigations into allegations of discriminatory housing and employment practices also were conducted, as well as investigations to determine compliance with the rules and regulations established by the Americans with Disabilities Act and the Architectural Access Board.

### **CONSUMER PROTECTION AND ANTITRUST**

Investigators continued to assist the Office in bringing G.L. c. 93A enforcement actions against businesses and individuals in major consumer areas. The division initiated several investigations and surveys to determine compliance with existing consumer laws and regulations, including multi-state and nationwide investigations into fraudulent sweepstakes promotions and telemarketing scams. The division also participated in Internet stings and gun enforcement and health care initiatives.

### **ENVIRONMENTAL PROTECTION**

The division's role in environmental protection cases primarily involved locating and identifying assets of potentially responsible parties liable for paying costs incurred by the Commonwealth in the clean up of polluted or hazardous waste sites. Investigators also located former employees and officers of defunct companies responsible in part for such violations, and reviewed, evaluated, and analyzed financial documents and prepared ability-to-pay analyses. The investigators also participated in lead paint inspections.

INSURANCE

Investigators reviewed and investigated businesses and organizations that withheld employee contributions for health insurance premiums, but failed to actually purchase the health insurance coverage. Other cases investigated included unlawful sales practices, known as “churning,” and the sale of fraudulent or costly life and health insurance policies.

PUBLIC CHARITIES

The division investigated individuals associated with organizations that raised funds from the public in violation of Massachusetts law. In some instances, solicitors posed as law enforcement or other public officials or otherwise misrepresented themselves or the charity’s purpose. Investigators worked with other law enforcement personnel in locating couriers who picked up donations.

CRIMINAL BUREAU

Investigators worked on cases that resulted in indictments and convictions against individuals for violations of the Commonwealth’s criminal laws. Cases included larceny against the elderly and vulnerable by home improvement contractors and a travel agent, unlicensed practice of medical professions, telemarketing fraud, and illegal charitable fundraisers.

TRIAL DIVISION

The division played a major role in tort actions filed against the Commonwealth by investigating allegations of abuse, mistreatment, and deaths of individuals in state care; alleged wrongful termination of state employees; and personal injuries and other damages occurring on state-owned property and/or in accidents on state roads or involving state vehicles. The division also investigated cases involving contract disputes and eminent domain proceedings.

ABANDONED PROPERTIES PROJECT

The division assisted the Attorney General’s Abandoned Properties Project by conducting research on target properties in several communities, primarily to determine the status of ownership and existence of encumbrances of the buildings, and, in some instances, assisted in inspecting properties scheduled for renovation. The division researched properties in Taunton, New Bedford, Worcester, and Brockton.

## STATISTICAL SUMMARY

The division opened 238 investigations in Fiscal Year 2004, with 332 investigations ongoing as of June 30, 2004.

DIVISION/BUREAU	OPENED DURING FISCAL YEAR 2004	ONGOING AS OF 6/30/04
Consumer Protection/Antitrust	26	82
Civil Rights	29	54
Public Charities	5	6
Insurance	17	14
Government	6	6
Environmental Protection	11	23
Trial	144	137
<b>TOTAL</b>	<b>238</b>	<b>332</b>

## MEDIATION SERVICES DIVISION

The Mediation Services Division coordinates and staffs Attorney General Tom Reilly's Student Conflict Resolution Experts (SCORE) Program, which is a nationally recognized peer mediation program created to reduce violence in schools and foster safer learning environments for students. In addition, Mediation Services oversees a Conflict Intervention Team (CIT) of specially trained community mediators, who mobilize at a moment's notice to provide emergency mediation service to schools in crisis or on the verge of crisis.

Mediation Services Division staff included Michelle Booth; Dawn Fontaine; Johny Laine; Steven Lilly-Weber; and David Rudewick.

## **SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES**

**Student Conflict Resolution Experts Program** Founded in 1989, SCORE is a school-based program that uses trained student mediators to resolve conflict among peers. The Attorney General awarded \$396,000 to 26 schools in communities across Massachusetts, including Boston, Dartmouth, Greenfield, Holyoke, Lowell, Lynn, Malden, Medford, Quincy, Pittsfield, Shirley, Somerville, Springfield, Taunton, Wakefield (serving 12 communities), and Worcester. Student mediators in SCORE programs mediated 2,298 conflicts involving 6,395 youth; 92% of these conflicts were resolved through the use of peer mediation. In Fiscal Year 2004, SCORE programs, as a whole, experienced a 21% increase in conflicts mediated, with a 28% increase in the number of youth involved in conflicts, compared with Fiscal Year 2003. The conflicts included situations involving physical fights, harassment, name-calling, stealing, threats, property damage, and rumors.

Division staff maintained close contact with participating schools, monitored grants, and provided technical assistance. Staff served as faculty for student mediator training events in which over 300 new mediators received training. In addition, division staff also provided advanced training and support to 34 adult mediation program coordinators.

**Face-to-Face Consumer Mediation Program** The Face-to-Face Consumer Mediation Program (FTF), established in 1983 to provide mediation services for the resolution of consumer and landlord/tenant disputes, offers disputants a convenient, non-adversarial alternative to court action. The Attorney General awarded grants totaling \$315,000 to nine community mediation programs across Massachusetts in Brockton, Fitchburg, Greenfield, Haverhill, Hyannis, Lowell, Somerville, Springfield, and Worcester.

This \$315,000 investment in mediation resulted in the return of \$979,647 in cash, and \$206,150 in non-cash value to Massachusetts consumers. The nine community programs mediated 1,903 disputes involving auto repairs, home improvement, landlord/tenant issues, debt collection, and broken contracts. Despite a slight decrease in the number of disputes mediated, the program experienced a 2% increase in cash value, and a 17% increase in non-cash value returned to consumers compared with Fiscal Year 2003.

Division staff monitored grant activities, provided technical assistance, served as faculty for basic training sessions for new volunteer mediators, provided advanced training for experienced community mediators, oriented new program coordinators, and provided regional forums for participating programs to share strategies and resources.

**Conflict Intervention Team** The Conflict Intervention Team (CIT) is a collaborative project among the Attorney General, the Massachusetts Department of Education, and the Massachusetts Association of Mediation Programs and Practitioners. Composed of a network of specially trained community mediators, CIT provides mediation services on a short-term basis to schools experiencing large-scale conflicts. In addition to the in-kind contributions of the Attorney General's staff assigned to the project, a grant from the Hewlett Foundation has funded CIT since 2001. Division staff, in collaboration with community mediation programs, conducted one intervention at a high school; this intervention addressed a conflict that involved issues of racism, anti-Semitism, and white supremacy. The division also engaged in targeted outreach to schools experiencing, or having the potential to experience, large-scale conflict to make them aware of services, and to provide referral to appropriate resources. The division, using Hewlett Foundation funds, designed and delivered training that significantly enhanced the skills of community mediators to conduct large group mediation sessions that are often a part of CIT responses.

**Youth Mediating Solutions** Funded by a Byrne Memorial Grant from the Executive Office of Public Safety, Youth Mediating Solutions (YMS) was a community-based, peer mediation program modeled after the SCORE program. Division staff established YMS in three pilot communities — Brockton, Dorchester, and Roxbury — in which the Office of the Attorney General is engaged in a Safe Neighborhood and/or Weed and Seed Initiatives. Forty-three youth and eight adult program coordinators received 20 hours of training required for implementation of the program.

## OUTREACH, EDUCATION, AND TRAINING

Division staff participated in a wide range of outreach, technical assistance, and training events concerning the application of mediation and violence prevention strategies, including advanced trainings for mediators; trainings for experienced mediators to coordinate or participate in future CIT activity; the Federal Reserve Bank's 2004 Life Smarts Youth Consumer Education competition; workshops for middle school and high school students; the 11<sup>th</sup> Annual Peacemakers Summit for middle and high school mediators; and the North Shore Peer Mediators' Summit. In addition to outreach events centered specifically on mediation, division staff served as members of an AGO training team that provided workshops to schools and students about bullying, harassment, and hate crimes. Division staff also served on the Attorney General's Children's Protection Project, Diversity Committee, Post-9/11 Working Group, Massachusetts Task Force on Hate Crimes, and Affordable Housing Initiative.

## DIVISION OF PUBLIC CHARITIES

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The Division of Public Charities carries out the Attorney General's responsibilities to represent the public interest in the proper solicitation and use of charitable funds, and to "enforce the due application of funds given or appropriated to public charities within the Commonwealth and prevent breaches of trust in the administration thereof." G.L. c. 12, § 8. A public charity is an entity which is non-profit, whose purpose is charitable, and that benefits a portion of the public; in addition to philanthropic organizations, examples of public charities include non-profit hospitals, schools, social service providers, and cultural organizations.

Enforcement of laws requiring accountability by public charities is central to division responsibilities with respect to charitable funds. With the exception of religious organizations and certain federally chartered organizations, all public charities must register with the division, and all registered charities must submit annual financial reports. The registrations and financial reports are public records, and the division maintains public viewing files. More than 22,000 charities are registered with the division in addition to over 300 professional fundraisers presently soliciting donations on behalf of charities in Massachusetts.

In addition to registering and obtaining financial reporting by charities and fundraisers, the Attorney General is the defendant in all proceedings brought to wind up the affairs of a public charity or to change the terms of a charitable trust.

The division engages in corporate governance and oversight initiatives, whether directed at health care organizations or other kinds of charities, to ensure that the governing boards of these institutions have carried out their fiduciary duties of due care and loyalty. The division also continued its activities in two areas central to its mission: enforcement litigation to address deception and fraud in charitable fundraising, and estate and trust actions to ensure that charitable trust funds were appropriately administered and applied.

The division recognizes that charities provide vital services in our communities while both enjoying certain benefits from their tax-exempt status and assuming certain obligations. As a result, the division was involved in a number of initiatives intended to strengthen the charitable sector, including presentations to various public groups and bar organizations on charities issues, issuing the division's annual report on charitable fundraising, and circulating for review and comment proposed legislation to strengthen the financial integrity and governance of charities.



The Public Charities Division included Jamie Katz, Chief; Marion Antonucci; Leslie Bennett; Amy Bryson; Caitlin Calder; Sandra Cardone; Eric Carriker; Brant Casavant; Patricia Clifton; Kevin Fennessey; Daniel Ferullo; Ann Giroux; Bernard Greene; Ann Higgins; Cathy Hoffman; Tenelle Jones; Beth McGillicuddy; Kathleen O'Connell; Johanna Soris; Elizabeth Story; and Eric Swansburg.

## SIGNIFICANT CASE SUMMARIES

### CHARITY GOVERNANCE

The Attorney General's oversight of charitable corporations focuses on stewardship by charity boards of directors. The division may become involved when directors breach their individual fiduciary duties of due care and loyalty or to prevent the misuse of charitable funds. In some cases, the division has engaged in investigations and then negotiated governance agreements that provide for reforms in how charities will operate. In other cases, the division filed enforcement actions in court after investigations.

- **Cambridge Credit Counseling Corp.** Cambridge Credit Counseling Corp. (Cambridge Credit), a non-profit corporation based in Agawam, Massachusetts, is the second largest credit counseling corporation in the country. It holds itself out as providing credit counseling services to individuals that have amassed excessive credit card debt. In the spring of 2004, the Attorney General sued Cambridge Credit in state court for violating both charities and consumer protection laws. The complaint alleges a host of allegations, including:
  - the founders of Cambridge Credit John and Richard Puccio, set up Cambridge Credit to funnel funds to for-profit companies that they, and other company insiders, owned and operated in violation of their fiduciary duties to the charity;
  - the Puccios and others gave themselves excessive compensation from Cambridge Credit in the form of both direct and indirect payments;
  - Cambridge Credit made substantial misrepresentations to consumers about the nature of its operations to induce individuals to use its services; and
  - Cambridge Credit charged consumers excessive fees for the services it provided.

The State of North Carolina also sued Cambridge Credit, and the Internal Revenue Service announced that it was examining Cambridge Credit and other credit counseling companies. While Cambridge Credit has since changed its operations and fees in response to concerns raised by state and federal regulators, the Office of the Attorney General has not yet resolved his case against the company.

- **IBA/David Cortiella** IBA, a non-profit community development corporation based in Boston's South End, controls certain housing developments, and offers social services and programs primarily for Hispanic residents. In late 2003, the board of IBA determined that its CEO, David Cortiella, had taken over \$180,000 as compensation from IBA and its affiliate without the board's knowledge or consent, and had entered into the purchase of some property without the full, formal approval of the board. IBA removed Cortiella and then tried to forge a settlement with him to get back funds. When Cortiella would not enter into a settlement with IBA, the Attorney General entered the negotiations, and indicated an interest in becoming active in a lawsuit brought by IBA against Cortiella. At that point, Cortiella agreed to enter into a Consent Judgment that required him to pay back \$172,000 to IBA, and that barred him from serving as a fiduciary of any Massachusetts charity for four years.
- **Swedenborg Church** In the fall of 2003, the division issued a Civil Investigative Demand to the trustees of the Boston Society of the New Jerusalem, Inc., a Swedenborgian church in Boston. After reviewing the documents and financial information it received from the church, the division determined that the officers of the church had allowed certain officers, directors, and employees to receive excessive compensation and too much in the way of direct and indirect benefits. Officers and directors of the church had both dissipated and improperly spent considerable funds of the church. The Attorney General and the church entered into a Consent Judgment in state court that required the church to implement a series of governance and financial policies and controls and that called for continual scrutiny of the church. The division continues to monitor the church to ensure that its leaders comply with the provisions of the Consent Judgment and charities laws.

#### FOR-PROFIT ACQUISITIONS

The Public Charities Division continued to review proposed for-profit acquisitions of health care providers and other charitable corporations. Massachusetts charitable organizations may not, on their own, "convert" to for-profit status. If charitable assets are to be transferred to a for-profit, it must be for fair value, the transaction must be necessary and in the best interest of the charity, and the charity board must have acted carefully and in a manner uninfluenced by conflict of interest. The division reviewed a number of proposed transactions and either agreed to the transactions or negotiated resolutions.

#### REVIEW OF ASSET DISPOSITIONS

A charitable corporation must give 30 days advance written notice to the Attorney General before making a sale or other disposition of all, or substantially all, of the charity's assets if the disposition involves or will result in a material change in the nature of the activities the corporation conducts.

G.L. c. 180, § 8A(c). On a regular basis and in substantial volume, the division reviewed correspondence and documents about transactions involving charities.

#### CHARITABLE CORPORATION DISSOLUTIONS

In order to cease corporate existence, charitable corporations must dissolve through a proceeding in the Supreme Judicial Court. To enforce the public's interest in the disposition of charitable assets, the Attorney General is a party to all voluntary dissolutions of charitable corporations under G.L. c.180, § 11A. After review, negotiation of necessary modifications, and assent by the division, the dissolving charity files the pleadings in the Supreme Judicial Court. The division reviewed numerous transactions involving proposed dissolutions, including devoting considerable attention to the ongoing dissolution of Bradford College in Haverhill.

#### SOLICITATION OF CHARITABLE FUNDS

Under G.L. c. 68, § 19, every charitable organization that intends to solicit funds from the public, except religious organizations, must apply to the division for a solicitation certificate before engaging in fundraising. Upon receipt, the division reviews certificate applications for compliance with statutory requirements. Unless there is a deficiency in the application, all certificates are issued within a 10-day statutory period.

The Attorney General takes affirmative legal action against charities and professional fundraisers for unfair or deceptive solicitation practices and to enforce their fiduciary duties with respect to funds raised. In addition to injunctive relief, the Attorney General may seek restitution of funds intended by the public to benefit a specific charity, or particular charitable purpose, along with penalties and fees.

**Cancer Fund of America** In 2000, the division sued this charity in Worcester Superior Court for fraudulent fundraising. Telemarketers hired by Cancer Fund of America (Cancer Fund) would tell prospective donors that the national charity would give direct financial support to cancer patients and their families. In fact, Cancer Fund received contributions of outmoded or discontinued diapers, toys, and other consumer goods from manufacturers and then, during the period in question, sent them on to hospices. The division continued with discovery and preparation for trial.

#### ESTATES AND TRUSTS

In furtherance of his authority to “enforce the due application” of charitable trust funds and to “prevent breaches of trust in the administration thereof,” the Attorney General is an interested party in the probate of all estates in which there is a charitable interest and in all other judicial proceedings affecting charitable trusts. The division continued to handle a large volume of cases in this area involving matters such as proposed allowance of accounts, will compromises, sale of real estate, change of purposes

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or beneficiaries of charitable trusts and bequests, amendment of charitable trusts to meet IRS requirements, and termination of charitable trusts under G.L. c. 203, § 25.

## STATISTICAL SUMMARY

### CHARITABLE CORPORATION DISSOLUTIONS

The division assented to 111 final judgments dissolving charitable corporations pursuant to G.L. c. 180, § 11A.

### WILLS, TRUSTS, AND OTHER PROBATE STATISTICS

The division received and reviewed 1,033 new wills, and received and reviewed 1,765 interim accounts for executors and trustees as well as 632 final accounts. In addition, the division received, reviewed, and assented to 58 petitions for licenses to sell real estate, and received and reviewed 528 miscellaneous complaints and filings.

### CHARITABLE ORGANIZATIONS: REGISTRATION AND ENFORCEMENT

The division processed approximately 18,060 annual financial reports, and annual filing fees totaled \$1,869,400. The division reviewed numerous new organizations, determined them to be charitable, and registered them. Each organization was sent the division's packet of information about the division's registration and filing requirements.

As part of an ongoing compliance program, division staff contacted charities whose annual filings were deficient or delinquent to rectify filing deficiencies.

### REGISTRATION OF PROFESSIONAL SOLICITORS AND FUNDRAISING COUNSEL

Under G.L. c. 68, §§ 22 and 24, all persons acting as professional solicitors, professional fundraising counsel, or commercial co-venturers, in conjunction with soliciting charitable organizations, must register annually with the division. Solicitors and commercial co-venturers must also file a surety bond in the amount of \$10,000. All fundraisers must also file with the division a copy of each fundraising contract, which they sign with any charitable organization, and solicitors must later file a financial return regarding each fundraising campaign.

The division received and approved 343 registrations, resulting in \$66,900 in fees to the Commonwealth. Registrations were received from 109 solicitors, 150 fundraising counsel, and 84 commercial co-venturers.

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### **MONEY RECOVERED FOR THE COMMONWEALTH TREASURY**

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Charitable Registration Fees	\$1,869,400
Fundraiser Registration Fees	66,900
Other fees, requests for copies, requests for computer information	1,859
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<b>TOTAL</b>	<b>\$1,938,159</b>

### **SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES**

#### **HEALTH CARE INITIATIVES**

The division focused much of its effort on health care, participating in a variety of efforts to analyze and stabilize the health care sector. Consistent with the Attorney General's strong interest in resolving problems related to the delivery of health care, the division monitored the actions of a number of the significant nonprofit health care institutions that are public charities in Massachusetts, including both hospitals and insurers. The division, with personnel from the Public Protection Bureau, reviewed and monitored the finances and operations of a number of financially distressed Massachusetts hospitals.

**CareGroup** The division continued to monitor the financial and operating condition of CareGroup and its affiliates (Beth Israel Deaconess Medical Center, Mt. Auburn Hospital, and New England Baptist Hospital). Division staff reviewed substantial amounts of financial and operational data and met regularly with representatives of the system and the affiliates. In addition, division and Office staff worked with experts hired by the Office to assess, on a regular basis, how effectively the board and officers of the health care system were performing in turning around the system's finances.

#### **LEGISLATION**

The Attorney General has circulated within the Massachusetts charities community a piece of prospective legislation that would improve the financial integrity of charities as well as improve their governance. Among other things, this proposed legislation called for board certification of organization financial submissions, audit committees, whistleblower protections, stronger standards for setting compensation and for related party transactions, and enhanced remedies for the Attorney General.

### TECHNOLOGY AND PUBLIC ACCESS

The division implemented a new computer database for charities that are registered with the division. While that database will not be accessible to the public, it will allow the division and the Office to retrieve far more information about charities than previously was possible. The division is also continuing to scan images of filed documents into its computers, and this project also will ultimately assist both information retrieval and compliance efforts, and will allow the public better access to the documents.

### OUTREACH, EDUCATION, AND TRAINING

The division continued its ongoing public education efforts regarding charitable giving and charity stewardship. In addition to continuing distribution of a wide variety of public education materials, division staff spoke to numerous charitable groups, served on several continuing professional education panels and national educational conference panels, and contributed to educational publications.

## UTILITIES DIVISION

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The Utilities Division represents utility consumer interests and is authorized to intervene in administrative and/or judicial proceedings on behalf of consumers in connection with any matter involving the rates, charges, prices or tariffs of an electric, gas, telephone or telegraph company doing business in the Commonwealth and subject to the jurisdiction of the Department of Telecommunications and Energy (DTE). G.L. c. 12, § 11E. The division's work is carried on before state and federal courts as well as administrative regulatory bodies such as the DTE, the Federal Energy Regulatory Commission (FERC), and the Federal Communications Commission (FCC).

In Fiscal Year 2004, the division focused on advocacy of consumer interests in connection with traditional utility rate cases (electric, gas, and telephone), and wholesale electric restructuring issues. Work continued among interested parties to enhance the service quality provided by the state's utilities.

The Utilities Division staff included Joseph Rogers, Chief; Edward Bohlen; Wilner Borgella; James Callanan; Michelle Cataldo; Alexander Cochis; Kerry Fernandes; Mary Flohr; Patricia Kelley; Judith Laster; Colleen McConnell; Timothy Newhard; Doe Pichard; and Karlen Reed.

## SIGNIFICANT CASE SUMMARIES

### UTILITY RATE CASES

- **Boston Gas d/b/a KeySpan Energy Delivery New England** D.T.E. 03-40 On April 16, 2003, KeySpan filed a general rate case seeking a \$61 million annual increase for its distribution base rates. The company also asked the DTE to renew, and continue indefinitely, its performance-based regulation that began in 1995. Hearings before the DTE concluded on August 11, 2003. The division filed its initial brief on August 29, 2003, and reply brief on September 17, 2003. On October 31, 2003, the DTE issued an order that reduced KeySpan's requested distribution rate increase by approximately \$30 million a year, adopting several of the arguments advanced by the division.
- **Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and NSTAR Gas Company** D.T.E. 03-47 On April 16, 2003, the Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and NSTAR Gas Company (NSTAR) filed a request with the DTE for approval of a new recovery mechanism related to pension and post-retirement benefits other than pensions (PBOP). The DTE ordered the tariff suspended until August 1, 2003. The DTE conducted hearings on August 6 and 7, 2003. The division and NSTAR submitted simultaneous initial briefs on August 19, 2003, and simultaneous reply briefs on August 28, 2003. On October 31, 2003, the DTE issued an order that reduced NSTAR's collection through its new reconciling pension tariff for 2004 by approximately \$52 million by adopting many of the positions of the division.
- **Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company, d/b/a NSTAR Electric** D.T.E. 03-121 On January 16, 2004, NSTAR asked the DTE to approve tariffs designed to establish standby rates for large- and medium-sized commercial and industrial customers who have their own onsite, self-generation facilities. The DTE allowed a number of parties with varying interests including DOER, CLF, SEBANE, the Energy Consortium, companies that sell self-generation units — and companies that install self-generation units — to intervene, and held eight days of evidentiary hearings. On June 4, 2004, the company and several of the intervenors filed a settlement agreement with the DTE. The division asked the DTE to modify the settlement agreement: (1) that standby rates in the agreement, along with the exemptions to certain onsite generating customers, be only temporary; (2) that the settlement standby rates include a contract demand transition charge, contract demand transmission charge and an administrative fee to prevent under-recovery of distribution system costs; and (3) that NSTAR perform studies and analyses on the type, amount and



benefits of onsite generation units on the distribution system. This matter is pending at the end of the fiscal year.

## ELECTRIC MATTERS

### FERC WHOLESALE RATE ISSUES

- **New England Regional Transmission Organization** FERC Docket No. ER04-157 ISO-New England (ISO-NE) filed a proposal with FERC to create a “New England only” Regional Transmission Organization (RTO). In addition, the New England transmission owners filed a separate-but-related proposal to increase their FERC authorized return on equity (ROE) for building new transmission lines. The division led other New England AG Offices and Consumer Advocates in writing a joint letter to the NEPOOL participants, urging rejection of the proposal because it provides few, if any, benefits to customers, is expected to cost customers \$40 to \$70 million annually in increased rates, and isolates ISO-NE from accountability to market participants. On October 3, 2003 NEPOOL voted overwhelmingly (80/20) to reject the proposal.

The division, along with consumer advocates from Maine, New Hampshire, and Connecticut, filed written comments asking FERC to reject both the RTO and ROE proposals. On March 24, 2004, the FERC issued an order approving the RTO, but setting the matter of the transmission owners’ authorized rate of return for hearing. On April 23, 2004, the division, with the Attorney General of the State of Rhode Island, and the Rhode Island Division of Public Utilities and Carriers, filed a Request for Rehearing of the FERC’s decision to accept without suspension or hearing, a 50 basis point adder to the ROE. The Commission appointed a settlement judge, but no agreement was reached and the matter remains pending at the end of this fiscal year.

- **Devon Power LLC, et al.** FERC Docket No. ER03-563-030 On March 1, 2004, ISO-NE proposed comprehensive locational installed capacity (LICAP) charges for New England.<sup>4</sup> ISO-NE’s proposal, which it hopes will provide incentives for the construction of new generating plants, would require ratepayers in the Boston metropolitan area (Northeast Massachusetts/Boston or “NEMA”) to pay approximately \$8.2 billion extra to the region’s electric generators over the next five years. In March 2004, the division, with the Rhode Island Attorney General, and the Rhode Island Division of Public Utilities and Carriers, filed written comments protesting

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<sup>4</sup> ICAP (Installed Capacity) is the amount of generation ISO-NE requires, on a regional basis, to meet its reliability requirements under certain contingency conditions (for example, loss of the largest generating unit or a key transmission line).

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the filing. On June 2, 2004, FERC issued a decision deferring implementation of the proposed ISO-NE LICAP plan until January 1, 2006, and ordering an evidentiary hearing and comprehensive examination of the issues raised in the plan. This matter is pending at the end of this fiscal year.

- **Salem Harbor Power Plant** FERC Docket No. ER04-841-000 U.S. Gen New England asked ISO-NE for permission to retire the Salem plant, claiming that it could not afford the \$175 million of equipment needed to comply with DEP air regulations that require sulfur dioxide and nitrogen oxide reductions. ISO determined that the Salem Harbor units cannot be retired because they are needed to maintain reliable power on the North Shore and in downtown Boston, absent additional generation or transmission. On May 14, 2004, U.S. Gen and ISO-NE filed a “Reliability Agreement” for approval with FERC that would authorize ISO-NE to charge the \$85 million cost of proposed environmental upgrades to NSTAR, N-Grid, and municipal utilities in the northeast Massachusetts area, which would in turn charge their customers. On June 4, 2004, the division filed written comments protesting the filing. This matter is pending at the end of this fiscal year.

#### ELECTRIC UTILITY TRANSITION CHARGE RECONCILIATIONS

The transition charge is a mechanism established by the Electric Restructuring Act of 1997 for an electric distribution company to recover its allowable stranded costs as a charge to customers. A company must annually reconcile or “true-up” its forecasted transition charges with the amount it actually recovered through its rates. G.L. c. 164, §§ 1A(a) and 220 C.M.R. § 11.03(4)(e). The division reviews the filings to ensure that companies recover only costs permitted by the Restructuring Act.

- **Boston Edison Company** D.T.E. 02-80A (Phase II) Boston Edison Company filed its 2002 reconciliation filings on its transition charge, energy efficiency, renewable charges, and other matters. After the division issued information requests and held settlement discussions, the company agreed to reduce its Default Service deferral by \$344,925, to incorporate the net cost impact of the class-action suit in Dwyer, et al. v. NSTAR Electric & Gas Corporation, et al., Civil Action No. 01-1817-C (Suffolk Superior Court), addressing the improper classification of certain Standard Offer Service Customers as Default Service, and to correct a calculation error of \$389,000 in the spreadsheet used to calculate the incentive bonus. On November 6, 2003, the DTE approved the Settlement and customers received a \$733,925 refund.
- **Cambridge Electric Light Company and Commonwealth Electric Company** D.T.E. 02-80 After the division issued information requests and held settlement discussions on the companies’ 2002 transition charge reconciliation adjustment filing, the companies agreed to

reduce their Default Service deferral by \$251,721, to incorporate the net cost impact of the class-action suit in Dwyer, et al. v. NSTAR Electric & Gas Corporation, et al. The DTE approved the Settlement and customers received a \$251,721 refund.

#### ELECTRIC INDUSTRY RESTRUCTURING-RELATED CASES

- **Massachusetts Electric Company and Nantucket Electric Company** D.T.E. 03-67 The company asked the DTE to approve an amendment to the company's Standard Offer supply contract(s) with Constellation Power Source, Inc., that would resolve a delivery point/congestion cost dispute by allowing the company to pay Constellation an additional annual fee, recovered from customers, of \$3.2 million. On July 17, 2003, the division urged the DTE to reject the company's proposed amendment because it violated the express terms of the company's Restructuring Settlement Agreement and only FERC had jurisdiction over the standard offer agreements. On August 20, 2003, the DTE declined jurisdiction over the amendment, saving customers \$3.2 million per year.
- **Investigation Into the Costs That Should Be Included in Default Service Rates** D.T.E. 03-88 On April 24, 2003, the DTE issued an order that addressed, among other things, the types of costs that should be included in default service rates. On November 17, 2003, the DTE opened separate proceedings for each distribution company to determine (1) the amount of costs to be transferred from base rates to default service rates and (2) the appropriate adjustment to be applied to each rate class's distribution base rates. The electric companies made filings on January 15, 2004. This matter is pending at the end of the fiscal year.
- **Massachusetts Electric Company and Nantucket Electric Company** D.T.E. 03-123 On November 25, 2003, the DTE issued a Notice of Filing and Request for Comments on the petition of Massachusetts Electric Company and Nantucket Electric Company for approval to maintain the standard offer service fuel adjustment at current levels and for approval of an information program called Now Is the Time to Choose. The company hoped that fixing the Standard Offer Service rate would allow competitive suppliers to offer lower prices to customers, creating incentives for customers to move from the higher fixed standard offer service rates, and establishing a more competitive market. On December 17, 2003, the division urged the DTE to reject the company's proposal because it is contrary to the public interest and is inconsistent with the company's Restructuring Settlement Agreement and DTE precedent. The company then withdrew its proposal.

NATURAL GASAPPEALS

- **Fitchburg Gas and Electric Light Company** D.T.E. 99-66 The company appealed the DTE's May 31, 2001, decision finding that the company had double-charged customers gas inventory financing charges, and ordered the return of approximately \$1.5 million in over-collections, including interest, over a 10-year period. The Supreme Judicial Court heard oral argument on October 8, 2003, and, on January 8, 2004, upheld the DTE's decision. Upon remand, the company agreed with the division to accelerate the refund of the over-collections and return the funds to customers in a three-month period, rather than over the remaining 10-year period, resulting in customer savings of \$380,000.

NATURAL GAS COMPANY FINANCING

- **Berkshire Gas Company** D.T.E. 03-65 On September 15, 2003, Berkshire Gas Company filed a petition for approval of a financing plan involving the issuance of long-term debt securities in an amount of up to \$20 million pursuant to G.L. c. 164, § 14. The division intervened and filed a brief noting that the company failed the net plant test, should not be allowed to issue securities over \$7 million and should not be allowed to engage in speculative financial derivative transactions as part of its proposal. The DTE issued an order agreeing with the division and allowed the company to issue securities of up to only \$7 million, unless the company could meet the net plant test for the desired additional amounts.

TELECOMMUNICATIONSRETAIL RATES

- **Wireline E911 Surcharge** D.T.E. 03-63 On May 29, 2003, the DTE, in response to the Acts of 2002, c. 239, § 1, requiring a customer surcharge for Emergency 911 service, opened a docket to set the interim E-911 services surcharge for all residential and business telephone customers in Massachusetts. Verizon and the Statewide Emergency Telecommunications Board filed a joint proposal for an interim surcharge of \$.85 per month per customer (calculated over five years). The division intervened and urged the DTE to fully investigate Verizon's claimed E-911 deficit. The DTE approved Verizon's interim surcharge but required the Company to audit the E-911 costs. On March 4, 2004, the DTE selected Ernst and Young as the auditor. This matter is ongoing at the end of this fiscal year.

WHOLESALE RATES

- **Mass Market UNE Impairment Review** D.T.E. 03-60 On February 20, 2003, the FCC outlined new rules governing incumbent local exchange carriers' (ILEC) obligations to make portions of their networks available for the mass market as unbundled network elements (UNE).

The FCC issued its Triennial Review Order on August 21, 2003, to take effect on October 2, 2003. The DTE opened its investigation into the mass market but suspended its proceedings after the D.C. Circuit Court of Appeals vacated and remanded some of the FCC's UNE rules. The U.S. Solicitor's Office declined to appeal the D.C. Circuit's decision, and the U.S. Supreme Court declined to hear the pending motions to stay. The matter remained pending at the end of the fiscal year.

- **Voice Over Internet Protocol (VoIP) Rulemaking** F.C.C. Docket WC 04-36 The FCC opened a rulemaking docket in March 2004 on Voice Over Internet Protocol (VoIP), a new method of transmitting telephone calls over the Internet, minimizing the use of the public switched telephone network. VoIP and other IP-enabled telephony service providers are marketing their products as low-cost, highly flexible alternatives to traditional phone service. The FCC sought comments, due July 14, 2004, on whether VoIP services should be considered an information service (unregulated) or a telecommunications service (regulated).
- **NASUCA Truth in Billing Petition** F.C.C. CG Docket No. 04-208, 98-170 The division helped draft a petition the National Association of State Utility Consumer Advocates (NASUCA) filed with the FCC on March 29, 2004, asserting that long-distance and cell phone carriers are passing along their ordinary operating costs as "regulatory compliance" fees in monthly line-item surcharges on consumers' bills. NASUCA asked the FCC to investigate this practice and to reject surcharges that are labeled as "regulatory" but are not mandated or investigated by federal, state, or local governments. On May 25, 2004, the FCC docketed the petition.

#### WIRELESS TELEPHONES

- **National Association of Attorneys General Wireless Inquiry** The division and CPAD helped lead a joint effort by 32 state Attorneys General to investigate the rates, terms, and conditions of Verizon Wireless, Cingular Wireless, and Sprint PCS. The three carriers agreed, with an assurance of voluntary compliance, to a 3-day return policy that allows consumers to return their cell phone for any reason, and pay for only actual usage and fees that are related to actual usage; to make clear and conspicuous disclosures during a sales transaction, including telemarketing and Internet sales, which include (a) rate plan area, (b) recurring monthly service charges, (c) number of peak and off-peak minutes, (d) hours when peak and off-peak minutes apply, (e) charge for overtime or excess minutes above allowance, (f) charge for long-distance minutes, (g) charge for off-network or roaming minutes, (h) minimum contract term, (i) early termination fee, (j) activation or other service initiation fees, (k) material terms of the cancellation and return policy and applicable charges, (l) discretionary monthly charges, (m) promotional

price disclosures, and (n) free-to-pay conversion disclosures; to separate taxes, fees, and other charges in a consumer's bill; to provide a toll-free number to consumers so that they can contact the carrier with concerns; to explain the basis for using the advertising terms, such as "nationwide," "national," and "coast-to-coast;" to provide consumers, at the time of sale, written disclosures detailing the rate plan and enhanced features; and to disclose in their advertising any limitation to a free offer. The wireless carriers also agreed to a financial settlement of \$5 million; Massachusetts will receive \$425,000 as its share of the settlement proceeds.

### STATISTICAL SUMMARY

The Utilities Division avoided increased rates or achieved refunds or settlements of approximately \$87 million:

KeySpan Energy Delivery New England, D.T.E. 03-40	\$30 million
Boston Edison Company, D.T.E. 02-80A	\$733,925
Cambridge Electric Light Company and Commonwealth Electric Company, D.T.E. 02-80	\$251,721
Massachusetts Electric Company and Nantucket Electric Company, D.T.E. 03-67	\$3.2 million
Boston Edison Company, Cambridge Electric Light Company, Commonwealth Electric Company and NSTAR Gas Company D.T.E. 03-47	\$52 million
Fitchburg Gas and Electric Light Company, D.T.E. 99-66	\$380,000
NAAG Wireless Inquiry	\$425,000
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<b>TOTAL</b>	<b>\$86,990,646</b>

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## **SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES**

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### **LOW-INCOME CUSTOMER INITIATIVES**

**Increasing the Penetration Rate for Discounted Electric, Gas, and Telephone Service** D.T.E. 01-106 On December 17, 2001, the DTE opened a formal investigation into increasing the participation in discount programs available to eligible low-income customers for gas, electric, and telephone discount service. On July 2, 2003, the division submitted comments supporting a proposal for utilities to electronically transfer all residential accounts to the Executive Office of Health and Human Services (EOHHS) for the sole purpose of identifying customers eligible for discounted service (with destruction of non-matching data). On August 8, 2003, the DTE ordered the utilities to begin a computer-matching program with EOHHS, and indicated that it would consider proposals for rate recovery of increased expenses resulting from the computer-matching program in a second phase. On August 28, 2003, NSTAR filed a motion for reconsideration or, in the alternative, clarification of the DTE's order that the transfer of customer information will not commence until the DTE rules on recovery of the costs of the program's implementation. This matter remained pending at the end of this fiscal year.

**The Enhanced Outreach Program** The Enhanced Outreach Program was developed as a settlement among NSTAR, the Attorney General, and the Low-Income Energy Affordability Network (LEAN), and the DTE approved it on August 31, 2001. The Program increases low-income customer participation in energy efficiency programs and prevents the shutoff of low-income customers who are in arrears on their electric bills. In order to be eligible for the Program, customers agree to participate in credit counseling by local Community Action Programs and in utility efficiency programs. In exchange, their electric bill arrears are paid and utility shutoff is prevented. The Program is funded from monies paid to Commonwealth Electric Company for the replacement of power costs it incurred in connection with an outage at Boston Edison's Pilgrim Nuclear Power Station (Commonwealth Electric Company, D.P.U. 89-3C-2 (1990)).

The parties to the settlement reviewed the Program and made three modifications designed to enhance its success: (1) revised the eligibility requirements to include those customers who have not been involved in an approved energy efficiency program at the current residence within the previous 12 months; (2) modified the schedule of arrearage reduction so that arrears forgiveness will be made in two installments, the first installment of approximately one-half of the allotted funds credited to the customer's account in Month One of the Program, and the remaining installment credited to the



customer's account upon successful completion of the Program; and (3) the company agreed to monitor the electric accounts of Program participants for 18 months following the customer's successful completion of the Program, and report back to the Settling Parties. The DTE approved the modifications.

#### SIGNIFICANT ENERGY FACILITIES SITING ACTIVITIES

**Cape Wind Offshore Wind Farm Wind Public Outreach and Education Initiative** The division participated in the Massachusetts Technology Collaborative's (MTC) stakeholder process to deliberate issues surrounding Cape Wind's proposal to develop a wind farm on Horseshoe Shoal in Nantucket Sound. The MTC invited more than 40 key individuals representing the interests of the Cape & Islands, as well as state and federal agencies and elected officials to participate in this process. The division also monitored siting issues before the Energy Facilities Siting Board, **Petition of Cape Wind Associates, LLC and Commonwealth Electric Company d/b/a NSTAR Electric for Approval to Construct Two New 115 k-V Electric Transmission Lines in the Towns of Yarmouth and Barnstable** EFSB 02-2/D.T.E. 02-53.

**Weaver's Cove, L.L.C. Liquefied Natural Gas (LNG) Facility** Weaver's Cove, L.L.C. has applied to FERC for permission to build a LNG facility and terminal on the banks of the Taunton River in Fall River, Massachusetts. By long-standing agreement with the Energy Facilities Siting Board, FERC has exerted exclusive jurisdiction over LNG facilities. The division intervened in the proceeding and sent a letter to FERC Chairman Pat Wood informing him about significant community opposition and requesting his assistance to ensure the public safety of the surrounding communities.

#### UTILITY SERVICE QUALITY

**Utility Service Quality** The division continued to examine the issue of utility service quality, working with consultants, unions, customer groups and other interested parties to review service quality performance of Massachusetts-based companies in comparison to each other and in other states based on identifiable performance measures. In June 2004, the division received a report from its consultants, Energy Advisors, LLC, containing recommendations to improve service quality standards and oversight in Massachusetts, and recommendations and proactive steps to achieve this goal. This project is ongoing at the end of the fiscal year.

**Berkshire Gas Company's 2002 Service Quality Report** D.T.E. 03-11 On March 12, 2003, the DTE solicited comments on the 2002 Service Quality Report (SQ Report) filed by Berkshire Gas Company (Berkshire). The division asked for evidentiary hearings, but on September 30, 2003, the DTE issued a Final Order approving Berkshire's SQ Report without holding hearings. On October 20, 2003, the division filed a Motion for Reconsideration with the DTE, renewing the request for an

evidentiary hearing to resolve a dispute of material fact regarding Berkshire's compliance with the staffing level requirements of G.L. c. 164, § 1E. The division awaits the DTE's ruling on the Motion for Reconsideration.

#### CABLE TELEVISION

The Division Chief was appointed as the Attorney General's representative to the Legislature's Special Commission to Conduct an Investigation and Study Relative to the Adequacy and Effectiveness of Existing Licensing and Regulation of the Cable Television Operations by Municipalities and the Commonwealth. The Commission reviewed testimony gathered from three public hearings and filed its final report with the Joint Committee on Government Regulations on December 30, 2003. Division staff prepared and presented a draft cable consumer bill of rights to be included in the final report.

### OUTREACH, EDUCATION, AND TRAINING

The division, working with the AG Elder Hotline, made several presentations to elder groups on telephone and consumer fraud issues.

# REGIONAL OFFICES

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WESTERN MASSACHUSETTS

CENTRAL MASSACHUSETTS

SOUTHEASTERN MASSACHUSETTS

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## WESTERN MASSACHUSETTS DIVISION

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The Western Massachusetts Division (WMA Division) of the Office of the Attorney General, located at 1350 Main Street, Springfield, and a part of the Regional Operations Division of the Executive Bureau, is responsible for handling affirmative criminal and civil investigations and litigation, as well as civil defensive litigation and administrative law matters arising in the four Western Massachusetts counties: Hampden, Hampshire, Franklin and Berkshire. The Government Bureau's state-wide Municipal Law Unit also is housed in the Western Massachusetts Division, and provides by-law review and approval, as well as training and advice to town and municipal officials throughout the state. The Business and Labor Protection Bureau (BLPB) Fair Labor Division's Western Massachusetts office is responsible for enforcing the state's wage and hour laws on behalf of the citizens of Western Massachusetts. The division also responds to a large number of consumer complaints, and provides educational outreach to area residents.

The division consists of the following full-time staff members: a division chief, deputy division chief, 12 assistant attorneys general, two civilian investigators, a consumer liaison, one investigator assigned to the BLPB's Medicaid Fraud Control Unit, four Massachusetts State Police Officers, four Fair Labor Division inspectors, one administrative assistant, one paralegal, and six support staff.

During Fiscal Year 2004, the Western Massachusetts Division staff included: Janice Healy, Division Chief; Michelle Aubé; Bruce Bussiere; James Clark; Susan Decker; Susan DeVine; Jonathan Driskell; Joseph Drzyzga; Robyn Gay; John Gibbons; Sandra Giordano; Bart Hollander; Timothy Jones; Karen Kapusta; Michael Konderwicz; Kelli Lawrence; Tom Nartowicz; William O'Neill; Robert Ritchie; Michael Russo; Palmer Santucci; Matthew Shea; Cynthia Sherman-Black; Laurie Simmons; Maria Smith; Steven Spencer; Christopher Speranzo; Richard Steward; Rosemary Tarantino; Theresa Ukleja; Eva Wanat; James Whitcomb; and Judy Zeprun Kalman.

### SIGNIFICANT CASE SUMMARIES

The following provides an overview of several significant cases undertaken by the Western Massachusetts Division during Fiscal Year 2004:

#### BUSINESS AND LABOR PROTECTION BUREAU

- **Millivision** A single non-payment complaint for four- to five-weeks of unpaid wages led to our negotiating \$330,000 restitution for 35 employees from this South Deerfield high-tech

company. The Office intervened to ensure payment of \$270,000 in pre-bankruptcy and \$56,000 in post-bankruptcy wages.

- **Estes Express Lines, Inc.** Estes Express is a trucking firm in Springfield whose home office is in South Carolina. Our audit led to a Division of Occupational Safety opinion letter confirming that dock workers/loaders are entitled to overtime pay when they work more than 40 hours in a week. The company signed a settlement agreement and paid \$23,000 in restitution to 44 workers for unpaid overtime.
- **Prevailing Wage Enforcement** During Fiscal Year 2004, investigators charged with prevailing wage enforcement issued 28 citations against 25 contractors who failed to pay the prevailing wage rate and failed to file true and accurate copies of their certified payroll records as required under the Massachusetts Prevailing Wage Laws.

#### CRIMINAL BUREAU

- **Commonwealth v. James Doyle** Following a jury trial in December 2003 in Hampden Superior Court, the defendant was found guilty by a Superior Court Jury of trafficking in over 14 grams of cocaine. Doyle, a former president of the Outlaw Motorcycle Club in Ludlow, “The Longriders,” sold a quantity of cocaine to an undercover trooper outside a bar in the Indian Orchard section of Springfield. He was sentenced to three years in State Prison. Assistant Attorney General Matthew Shea prosecuted the case.

#### GOVERNMENT BUREAU

- **Paul Campana v. Commonwealth of Massachusetts Department of Environmental Protection; David Howland; Deirdre Doherty Cabral; Mary Holland; Edward Kunce; Alan Weinberg; David B. Struth** The plaintiff was a former DEP employee. He brought numerous civil rights and defamation claims against several individual defendants and DEP. These alleged claims arose out of negative relations and performance reviews the plaintiff had with DEP and his private business of inspecting and designing septic systems under DEP’s new Title V regulations. DEP brought an enforcement action against the plaintiff for violating Title V in the course of his private business. The plaintiff contended that DEP’s pursuit of the Title V violations violated his civil rights and defamed him because DEP’s allegations were without merit and brought only because he exercised his right of petition and other constitutional rights when he challenged certain adverse employment actions. The defendants prevailed on summary judgment that was affirmed by the First Circuit Court of Appeals. The plaintiff claimed damages in excess of \$400,000.

- **Phillip Dzialo, et al. v. Greenfield Community College** This case arose out of catastrophic brain injuries suffered by an 11-year-old boy while at camp at Greenfield Community College. During a water rescue simulation, Adam Dzialo's foot became caught between rocks and he was submerged for over 20 minutes. Plaintiffs alleged numerous civil rights and negligence claims and were seeking over \$80 million in damages. The legislature passed special legislation to settle this matter for \$486,000 in addition to the \$300,000 offered on the three negligence claims. The Office ultimately offered an additional \$150,000, which was estimated to be the cost of litigation on the civil rights claim. The Dzialos accepted the total amount (\$936,000) and placed almost all of it in a structured annuity that will pay out approximately \$100,000 per year for Adam Dzialo's life. All claims were dismissed with prejudice and a complete release was signed.
- **Robert W. Caplette v. Terence H. Buckley and William F. Hetherington, and Robert W. Caplette v. The Commonwealth of Massachusetts, Executive Office of Health and Human Services, Department of Mental Retardation** (Hampden County Superior Court) The plaintiff alleged that he was defamed, intentionally mentally distressed, and interfered with by Assistant General Counsel Buckley and Assistant Commissioner Hetherington during the course of a claim for workers' compensation benefits. The plaintiff had claimed total and permanent disability, which was viewed as fraudulent. The Superior Court allowed the Defendants' Motion for Summary Judgment and the plaintiff appealed.

**Government Bureau Statistical Summary:**

As of June 30, 2004, there were a total of 181 Government Bureau cases consisting of 84 Trial Division cases and 97 Administrative Law Division cases pending in the WMAS Division.

During Fiscal Year 2004, 73 new civil defensive cases were assigned and one affirmative case was approved for litigation. In addition, one new case was assigned to a volunteer assistant attorney general, 13 new cases were assigned to special assistant attorneys general, and a WMAS assistant attorney general was assigned to supervise the litigation and handling of those cases.

During Fiscal Year 2004, 47 cases were closed by division staff.

Total Saved for the Commonwealth on civil defensive litigation cases: \$237,248.

**Municipal Law Unit Statistical Summary:**

During Fiscal Year 2004, the Municipal Law Unit reviewed: 708 general by-laws, of which 632 (89.3%) were approved, 40 (5.6%) were approved with partial deletion, four (0.1%) were disapproved,

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14 (2.0%) were returned with a finding that no action by the Attorney General was required by state law, and 18 (2.5%) received cautions; 920 zoning by-laws, of which 850 (92.4%) were approved, 41 (4.5%) were approved with partial deletion, seven (0.1%) were disapproved, 11 (1.2%) were returned with a finding that no action by the Attorney General was required by state law, and 19 (2.1%) received cautions; 10 historic district by-laws, of which all but 1 (90%) were approved; 15 charter amendments, of which all but two (86.7%) were found to be consistent with state law.

#### PUBLIC PROTECTION BUREAU

##### Civil Rights Division

- **Commonwealth & James Sprowson v. Wheel Estates and Morgan Management** (Housing Court, Western Division) A housing discrimination complaint was filed against the owner and operator of Wheel Estates, a mobile home park located in North Adams, MA, as the result of allegations that the park discriminated against a disabled resident by failing to make reasonable modifications to the common areas of the park in order to provide him with access to these areas.

##### Consumer Protection and Antitrust Division

- **Commonwealth of Massachusetts v. Scott, et al.** (Hampshire Superior Court) The plaintiff was soliciting funds for charity after September 11<sup>th</sup> without a license or other statutory requirements. The Superior Court granted the Commonwealth's request for an injunction that stopped the fundraising and required an accounting. Following a trial in Hampshire Superior Court, the court ruled that the defendants violated several public charities laws and the Consumer Protection statute by soliciting funds in the wake of September 11<sup>th</sup> by failing to register as a charity and failing to properly account for the funds collected and ordered them to pay \$3,500.

### SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES

**Government Bureau-Civil Defensive Litigation:** The WMA Division continued to provide the highest quality of legal representation to agencies and individual state employees required to respond to litigation filed by members of the public. During Fiscal Year 2004, there were 181 civil defensive litigation matters active in the division.

**Public Protection Bureau-Civil Rights Division:** The Attorney General's WMA Division continued to meet its statutory responsibilities to affirmatively prosecute housing discrimination actions throughout Western Massachusetts and obtained significant settlement results in two housing discrimination cases.



During Fiscal Year 2004, the WMA Division also continued with its efforts to assist schools throughout the region in ensuring that students' civil rights are protected. To that end, division staff participated in numerous outreach and training efforts designed to educate school personnel at all levels regarding the key components of a comprehensive student civil rights policy, along with more specific trainings focusing on the prevention of bullying, harassment, hate crime and civil rights violations.

**Public Protection Bureau-Consumer Protection and Antitrust Division:** Through the efforts of our division's Consumer Liaison, as well as the efforts of our civil investigative staff and local consumer protection programs that are funded through the Office, the needs of consumers throughout the region were effectively met. Additionally, our division continued to advance the Attorney General's priorities in the area of elder protection through cross-bureau outreach and education programs and an elder protection conference designed to educate senior and elder protection providers regarding scams, fraud, and abuse.

## OUTREACH, EDUCATION, AND TRAINING

During Fiscal Year 2004, staff in the WMA Division were actively engaged in advancing numerous AGO cross-bureau initiatives and trainings. Division staff advanced the Attorney General's child protection and school safety priorities by providing the Springfield School System with numerous civil rights training programs for school personnel. The Deputy Division Chief, four Assistant Attorneys General, and six support staff participated in a variety of programs, including the 35<sup>th</sup> anniversary of the Springfield School Volunteers Program. The Division Chief actively participated in the development of a community-based Weed & Seed Initiative that is targeting the Mason Square section of Springfield for crime reduction and neighborhood revitalization. The Attorney General's Abandoned Housing Project also is contributing to this initiative. WMA Division staff also participated at the local level in the Attorney General's Office Holiday Toy and Food Drive by coordinating a clothing and food drive, as well as a holiday toy drive to benefit ARCH, the YWCA's domestic violence shelter program. Additionally, addressing the needs of elder consumers was designated as a priority of the Public Protection Bureau. Regional staff advanced this priority by conducting numerous educational training programs for area seniors and elder service providers. Staff also volunteered their time to the "Spruce Up Springfield" park cleanup campaign.

In order to foster communication and cooperation among local law enforcement agencies, staff attended the monthly meetings of the Springfield Violence Prevention Task Force, the Big Brother/Big Sister Program, and the Peacemaker's Peer Mediation Summit. Assistant attorney general staff also actively fostered the Office's relationship with the local legal community through participation in the

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Women's Bar Association, the Hampden County Bar Association, and as panelists for legal programs at Western New England College School of Law. Additionally, staff in the Municipal Law Unit continued to provide numerous training and educational programs for towns and municipalities throughout Western Massachusetts.

Division staff also actively participated in numerous cross-bureau working groups, including the Diversity Committee, the Web site Committee, the Elder Strike Force, and the Professional Development Unit working group. Last, Western Massachusetts staff participated in numerous professional development training programs presented by the Attorney General's Institute.

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## CENTRAL MASSACHUSETTS DIVISION

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The Central Massachusetts Division (CMA Division) is a regional office located at 1 Exchange Place in Worcester. The CMA Division includes lawyers, inspectors, and administrative staff committed to promoting Attorney General Tom Reilly's initiatives in the Central Massachusetts region and responding to the specific needs of Worcester County residents. During Fiscal Year 2004, the CMA Division comprised members of several of the Attorney General's bureaus and divisions, including the Business and Labor Protection Bureau's Fair Labor and Business Practices Division; the Public Protection Bureau's Consumer Protection and Antitrust Division; and the Government Bureau's Trial Division. In addition to handling cases, the division responded to numerous calls and in-person visitors from Worcester County residents and businesses seeking consumer information, wage and hour assistance, and requests for educational outreach.

During Fiscal Year 2004, the following staff members worked in the CMA Division: Maria Hickey Jacobson, Chief; Salvatore Giorlandino, Assistant Attorney General, Government Bureau; Charisma Lam, Assistant Attorney General, Consumer Protection and Antitrust Division; Patricia Bopp, inspector, Fair Labor and Business Practices Division; John Gatti, Jr., inspector, Fair Labor and Business Practices Division; James Gentile, investigator, Public Protection Bureau; Edward Horniak, inspector, Fair Labor and Business Practices Division; Alex Guardiola, inspector, Fair Labor and Business Practices Division; Wendy Parsons, Administrative Assistant; and Suzanne Uncapher, Legal Secretary.

### SIGNIFICANT CASE SUMMARIES

#### GOVERNMENT BUREAU

The Attorney General's Central Massachusetts Division continued to provide the highest quality of legal representation to agencies and individual state employees required to respond to litigation filed by members of the public. Highlights of the Government Bureau cases handled by the CMA staff in Fiscal Year 2004 include:

- **Aitken v. Worcester State College** (Worcester Superior Court) Trial held September 15 and 16, 2003. Plaintiff demanded \$100,000 to settle her claims after she slipped on snow/ice on the stairs leading from the College's library. Plaintiff fractured her ankle and underwent surgery to insert screws in her ankle. Jury returned a verdict on behalf of Worcester State College after one-half hour deliberation.

- **Puorro v. Middlesex Sheriff James DiPaola** The Appeals Court reversed a Superior Court judgment against Middlesex Sheriff James DiPaola for Puorro's failure to exhaust his administrative remedies. The SJC subsequently denied the plaintiff's petition for further appellate review of the Appeals Court's judgment dismissing the plaintiff's wrongful termination suit. Had the plaintiff prevailed, the total judgment would have been approximately \$750,000, which would have included interest dating back to November 1997.
- **Clemente v. Attorney General, et al.** A single justice of the Appeals Court dismissed Mr. Clemente's appeal as premature.
- **Breneman v. United States, ex. rel. the Federal Aviation Administration, et al.** The Brenemans appealed the U.S. District Court's dismissal of their taking claims against MAC on Eleventh Amendment immunity. The companion case in Worcester Superior Court was also dismissed, a decision later appealed by plaintiffs.
- **Qualey v. CRAB** Chapter 30A appeal of CRAB's decision was affirmed.
- **LeBlanc v. Board of Appeal Motor Vehicle Liability Policies and Bonds** (Worcester Superior Court) Motion to dismiss for failure to prosecute was allowed.
- **McConville v. Board of Appeal Motor Vehicle Liability Policies and Bonds** (Worcester Superior Court) Motion to dismiss for failure to prosecute was allowed.
- **Daniel v. Massachusetts State Lottery Commission** (Worcester Superior Court) Defendant's Motion for Summary Judgment was allowed in a case where the plaintiff claimed the Lottery denied her a lottery prize.
- **Commonwealth v. Anderson Nichols, et al.** After mediation, case settled with defendant agreeing to pay \$175,000 to the Commonwealth after three years of denying liability and refusing to make a settlement offer.
- **Fafel v. Middlesex Sheriff James DiPaola** (U.S. District Court, District of Massachusetts) Defendant's Motion to Enforce Plaintiff's Acceptance of Defendant's Offer of Judgment was allowed.
- **Adoption of Reggie** (and two companion cases) The Appeals Court affirmed the Juvenile Court's dismissal of a natural father's late appeal from a judgment terminating his parental rights to the three children. Court adopted the Office's argument on behalf of DSS.

- **Fisher v. Worcester State College** (Worcester Superior Court) The court allowed the defendant's motion to dismiss the plaintiff's complaint for failure to make proper presentment pursuant to the Massachusetts Tort Claims Act.
- **Settlement Funding v. Lottery Commission** (Worcester Superior Court) The court allowed the Lottery's motion for reconsideration of the court's February 2003 order denying the defendant's motion to dismiss. Based on the Appeals Court's decision in Midland States Life Insurance Co. v. Cardillo, the plaintiff's suit was dismissed as to the Lottery because the plaintiff was seeking to enforce a lottery prize assignment contract it had made with the lottery prize-winners.
- **Greeley v. RMV** (Worcester Superior Court) The court allowed in part, the Registry of Motor Vehicle's motion for judgment on the pleadings in a license suspension case, but ruled the suspension period should have ended on December 5, 2003, not February 5, 2004.
- **Cruz v. Department of Correction, et al.** (Worcester Superior Court) The court dismissed the plaintiffs' negligence claims due to the plaintiffs' failure to comply with the Massachusetts Tort Claims Act's presentment requirement. The court also dismissed the plaintiffs' federal civil rights claims on sovereign immunity grounds.
- **Leger v. Department of Correction** (Suffolk Superior Court) The plaintiff voluntarily dismissed this Federal Family and Medical Leave Act case after DOC produced a copy of the plaintiff's voluminous personnel record to his counsel, which documented his repeated violations of DOC's attendance policies.
- **Ford v. Board of Appeal on Motor Vehicle Liability Policies and Bonds** (Worcester Superior Court) - Plaintiff filed 30A appeal after the Board upheld the Registry of Motor Vehicles' decision to refuse the plaintiff yet another road test after he repeatedly failed road tests. The parties signed a joint agreement where the plaintiff agreed to take driver's training and the defendant agreed to give the plaintiff one final road test when the plaintiff was ready. The plaintiff failed his latest road test on January 2, 2004.
- **Kobza v. Massachusetts Maritime Academy, et al.** (Suffolk Superior Court) This lawsuit arose out of the Massachusetts Maritime Academy's attempts to discipline a senior cadet student for his misconduct during the spring of 2003. The court issued two preliminary injunctions preventing the Academy from disciplining the plaintiff and allowing him to graduate. Settlement negotiations began in June 2003 but failed when the plaintiff moved to add new individual

defendants and civil rights claims to his complaint. Settlement negotiations resumed in October 2003, after the defendant Academy noticed the plaintiff's deposition and served other discovery request requiring the plaintiff to support his claims. The case settled on November 19, 2003, on very favorable terms to the Academy and its officials. The case was dismissed with prejudice and without costs and attorneys fees.

- **Moore v. DARE, et al.** (Worcester Superior Court) This negligence suit was brought by the biological mother of a minor (a boy) against: (1) DARE Family Services, Inc.; (2) DSS; and (3) the foster parent that DARE hired to care for the child. The mother contended that the foster parent negligently cared for the child by allowing him to go "rollerblading." The child was hit by a car while rollerblading. The case was settled by the plaintiff agreeing to receive \$20,000 from DARE, \$19,000 from DSS, and \$0 from the foster mother. The settlement was approved on December 15, 2003.
- **Herb Chambers v. Jennifer Davis Carey, as Director of the Office of Consumer Affairs and Business Regulations** (Appeals Court) The court affirmed Worcester Superior Court's dismissal of the plaintiff's claims that it was not properly notified of arbitration. Court adopted the Office's argument that the lower court lacked subject matter jurisdiction because Herb Chambers failed to exhaust its administrative remedies and failed to file a timely appeal of OCABR's arbitration decision.
- **Tahir Corp. v. State Treasurer** (Worcester Superior Court) The Treasurer's motion to dismiss this mandamus action was allowed.
- **Sorin v. Registrar of Motor Vehicles and Board of Appeal** (Worcester Superior Court) Plaintiff's motion for a preliminary injunction was denied.
- **Letondress v. Department of Revenue** (Worcester Superior Court) Settled for \$950 on the eve of the trial.

#### PUBLIC PROTECTION BUREAU

In October 2003, the CMA Division hired an assistant attorney general devoted to consumer protection matters. In Fiscal Year 2004, the assistant attorney general and civil investigator in the division handled numerous investigations and the following highlighted cases:

- In December 2003, a lawsuit was filed against Riverside Mitsubishi and its owners and managers, Daryl, Todd, and Brenda Rivernider, for defrauding consumers through various

unfair and deceptive trade practices in connection with their sale of used and new motor vehicles. Defendants' unlawful acts and practices included: failing to pay off loans on traded-in vehicles; failing to provide consumers with titles to purchased vehicles; failing to provide promised "cash back" or refinancing; failing to provide advertised incentives; failing to pay off original car loans after refinancing; and failing to purchase extended warranties paid for by consumers. In December 2004, the Worcester Superior Court issued preliminary injunctions against Todd Rivernider and the two corporate defendants prohibiting them from transferring assets and ordering disclosure of assets. In February 2004, Worcester Superior Court issued an order denying Brenda Rivernider's motion to dismiss and granting the Office's motion for preliminary injunction prohibiting Daryl and Brenda Rivernider from transferring assets and ordering disclosure of assets. In February 2004, the Office filed a complaint for contempt against Daryl Rivernider and Riverside Mitsubishi for allegedly selling a vehicle in Florida on behalf of Riverside Mitsubishi in violation of one of the preliminary injunctions. In March, a second complaint for contempt was filed in this case. The complaint alleges Daryl and Brenda Rivernider refinanced and obtained a home equity line of credit on their property in Florida and failed to disclose their assets, in violation of a stipulation in lieu of preliminary injunction and an injunction issued by the court. In May 2004, after a trial on the two complaints, the court found both Daryl and Brenda Rivernider in contempt. Litigation continued into the next fiscal year.

- **Adventure World RV** Investigated and filed complaint in May 2004 against three related corporate entities and their owners and managers, David, Catherine, and Robert Hirsch, for unfair and deceptive practices in connection with their sale of recreational vehicles. Defendants' unlawful acts and practices included: failing to pay off loans on traded-in recreational vehicles; failing to provide consumers with titles to purchased recreational vehicles; failing to pay off original loans after refinancing; and failing to purchase extended warranties paid for by consumers. In June 2004, the court issued a preliminary injunction against the corporate defendants and David Hirsch. A stipulation in lieu of preliminary injunction was entered into with Catherine Hirsch. The three corporate defendants and David Hirsch previously had filed for bankruptcy. The preliminary injunction was later amended to exempt the bankruptcy trustees of the corporate defendants and David Hirsch. Proofs of claim were filed with the Bankruptcy Court in the corporate and David Hirsch bankruptcies. Defendant Robert Hirsch filed and the court denied a motion to dismiss the Superior Court suit. Litigation continued into the next fiscal year.



BUSINESS AND LABOR PROTECTION BUREAU

During Fiscal Year 2004, the Central Massachusetts Division received 2,933 telephone inquiries and 252 walk-in visitors seeking assistance. For Fiscal Year 2004 Fair Labor cases and statistics, please refer to the Fiscal Year 2004 Report of the Business and Labor Protection Bureau.

OUTREACH, EDUCATION, AND TRAINING

CMA Division staff participated in numerous outreach, education, and training opportunities in Worcester County communities including:

- Presentations on Internet Safety at the Worcester Public Library, Auburn Middle School, Mass. General Hospital's Crime Prevention and Safety Fair, and Pathfinder Vocational High School (Palmer).
- Presentation on Bullying and Harassment at Venerini Academy in Worcester.
- Presentations and trainings on Shaken Baby Syndrome for Shaken Baby Syndrome Prevention Campaign in Central Mass., the UMass Early Intervention Program, and UMass Memorial Board of Trustees at Children's Medical Center and Housing Court Officials, Child Welfare Cases and Practices (Boston College Law School).
- Presentations on consumer and elder issues on WTAG's Sunday morning consumer show *Legal Express* (Worcester) and at the Elder Abuse Conference (Sturbridge), and training for the Massachusetts Motorcycle Association's Annual Meeting (Auburn), the Auburn Senior Center; the Brimfield Senior Center; the Townsend Senior Center, and the Cooperative Bank (Gardner).
- Presentations on identity theft for the Greater Gardner Chamber of Commerce, the Working Women Committee in Gardner, the Worcester Club, and the WISE Program (Worcester Institute Senior Education GWCBA).
- Presentation on car buying at the Worcester Public Library.
- Chief Jacobson also served on the statewide Children's Justices Act Task Force, as Chair of the Advisory Council to UMass Memorial's Children's Medical Center, and as an adjunct professor at Mount Wachusett Community College.

- Assistant Attorney General Giorlandino served as a teaching fellow and lecturer at Brandeis University and co-chair of the Trial Division's Employment/Civil Rights Practice Group.
- Staff also participated in office-wide Diversity Committee; attended Attorney General trainings on elder care, bankruptcy law, trial advocacy, civil rights law, court filing systems, public records, time management, and effective communication; and attended the AFL-CIO Labor Day Breakfast.



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## SOUTHEASTERN MASSACHUSETTS DIVISION

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The Southeastern Massachusetts Division (SEMA Division), located at 105 William Street, New Bedford, one of Attorney General Tom Reilly's three regional offices, is committed to promoting the Office's initiatives in the southeastern Massachusetts region. The SEMA Division consists of lawyers, inspectors, mediators, and administrative staff who work through the Business and Labor Protection Bureau's Fair Labor and Business Practices Division; Public Protection Bureau's Civil Rights and Civil Liberties Division and Consumer Protection and Antitrust Division; Government Bureau's Administrative Law Division, and the Trial Division.

During Fiscal Year 2004, SEMA staff included Mary O'Neil, Chief (7/1/03 - 3/8/04); Jim Sweeney, Chief (3/8/04 - 6/30/04); Cecile Byrne; Todd Davis; Diane Lopes Flaherty; Paul Gordon; Anita Maietta; Stephen Marshalek; Timothy McGuire; Patricia Medeiros; Mario Paiva; and Patricia Tapper.

### SIGNIFICANT CASE SUMMARIES

The following provides an overview of cases undertaken by SEMA staff during Fiscal Year 2004.

#### BUSINESS AND LABOR PROTECTION BUREAU

- **Universal Security Alarms**, an Ocean Bluff security company, was ordered to pay restitution of \$6,154 and a penalty of \$1,260 for failure to pay wages to six employees when the company closed.
- **Best of Care**, a Raynham home health care agency, was ordered to pay restitution of approximately \$23,000 to 39 employees for failure to pay overtime to employees.
- **C & O Enterprises/George Clements** (a/k/a North American Environmental), a Weymouth asbestos removal company, was ordered to pay \$38,862 in restitution and a \$3,590 penalty for failure to pay overtime to employees.
- **Continental Contracting**, a Canton company, was ordered to pay \$76,063 in restitution and a \$5,000 penalty for failing to pay 41 employees two weeks' pay for work on the Groton-Dunstable High School.
- **Manuel Pacheco/Mello, Inc.**, an Acushnet contractor, was cited with a penalty of \$500 for failure to maintain payroll records in accordance with the G.L. c. 151 while working on the New Bedford High School construction project.

- **CA Construction Drywall Finishers, Inc.**, a construction company, was cited and fined \$200 for failure to maintain proper payroll records while working on a Bellingham school construction project.
- **FF Painting Co.**, a Watertown company, was ordered to pay \$2,538.75 in restitution and a \$200 penalty for failure to pay overtime.
- **Funway USA** was ordered to pay \$5,855.29 in restitution and a \$200 penalty for failure to pay overtime 14 employees.
- **Emeralds Excavating/Ingeborg Kelleher** was cited for \$660 in restitution and a \$250 penalty for failure to pay prevailing wages to 10 laborers and operators on a Middleboro Fire Station construction project.

#### GOVERNMENT BUREAU

##### ADMINISTRATIVE LAW DIVISION

###### Defensive Litigation

- **Larry F. Wheatley v. William F. Galvin, as he is Secretary of the Commonwealth of MA and Matthew C. Patrick** In a case arising out of the contested election for a seat in the House of Representatives, the Supreme Judicial Court upheld the position of the Secretary of State that the state constitution makes the House of Representatives the exclusive and final judge of the elections of its members. The incumbent had won the election by 17 votes. The Barnstable Superior Court had ordered a new election after finding irregularities in the election. The House of Representatives, after holding a hearing and considering the evidence before the Superior Court, voted to seat the incumbent as the duly elected representative. The Supreme Judicial Court upheld the House's decision.
- **In re: Cohen/Doria/Jordan** The Appeals Court affirmed a Department of Social Services decision to terminate a father and mother's parental rights after severe and repeated incidents of domestic violence between the parents. (Medeiros)
- **In re: Dus (Adoption of Vera)** The Appeals Court upheld a Department of Social Services decision to terminate a mother's parental rights based on a history of abusive domestic violence.
- **In re: Strohl** The Appeals Court upheld a Department of Social Services finding terminating parental rights based upon findings of significant neglect of the child by the parents.

- **Rose Anne Barbar Neves v. DSS** - The Superior Court upheld a Department of Social Services finding of abuse and neglect.
- **K & R Auto Salvage, Inc. v. RMV** The division successfully resolved a challenge to the Registry of Motor Vehicles' regulations concerning auto salvage operations.
- **Fisher v. Alcoholic Beverages Control Commission** The division successfully defended an administrative decision to revoke a liquor license.
- **Nimrah Corporation, d/b/a Brewster Farms Market v. Roy E. Jones, III, Brewster Fire Chief** (Barnstable Superior Court) The parties were able to successfully resolve a dispute concerning the permit for the underground storage of gasoline.

The division also successfully handled a number of other cases arising out of a range of administrative agency decisions. Those cases included appeals from Registry of Motor Vehicles license suspension and revocation decisions, appeals from the Department of Social Services decisions involving findings of abuse or neglect and termination of parental rights, appeals from Retirement Board and Civil Service Commission decisions, appeals from decisions of the Housing Appeals Committee, appeals from decisions of the Department of Employment and Training on entitlement to unemployment benefits, appeals from Board of Registration in Medicine decisions, and challenges to agency regulations.

#### TRIAL DIVISION

- **James E. Parker v. City of Attleboro, et al.** (Bristol Superior Court) The Court dismissed a civil rights and negligence case brought by an individual who was mistakenly arrested on a default warrant that was issued against an individual with a similar name.

The SEMA Division also handled a number of additional Trial Division cases involving personal injuries on state property or as a result of motor vehicle accidents with state vehicles.

#### PUBLIC PROTECTION BUREAU

##### Consumer Mediation

- **Capitol Management Services** (Debt collection - Value \$3,605.97) The company was pursuing the wrong person to collect a debt and the consumer could not convince them of this fact. The division provided the company with information that proved the consumer was not the person responsible for this debt.
- **United of Omaha Life Insurance Company** (Insurance - Value \$72,268.32) An elderly couple from New Bedford had been talked into purchasing a 20-year annuity package that was

unsuitable for their needs. The company agreed to allow the couple to surrender their policy without any penalties.

- **Cedar Knoll Cemetery** (Service - Value \$1,500) A consumer had paid in full to have her recently deceased mother's memorial stone installed and became frustrated by the private cemetery's numerous delays. This consumer was assisted with getting the cemetery to immediately install the memorial, greatly easing the consumer's peace of mind.
- **Rajashekar Maragoud/Ranjan Sitaula** (Auto Sales by Private Party - Value \$1,000.00) A consumer purchased a vehicle that did not pass MA Inspection through a private-party sale. The seller was unaware of his obligation under the MA Lemon Aid Law to refund the money. The seller refunded the consumer.
- **Sullivan Auction of Westport** (Retail Sales - Value \$2,800.00) Two consumers had purchased bedroom furniture and a mattress that were infested with bedbugs. The pests severely infested their homes requiring extermination. Family members were medically treated for bites. In addition to refunds on their purchases, both consumers were requesting for reimbursement of their out-of-pocket expenses. The company refunded the consumer the cost of the mattress and reimbursement for expenses.

## **STATISTICAL SUMMARY**

### BUSINESS AND LABOR PROTECTION BUREAU

#### FAIR LABOR AND BUSINESS PRACTICES DIVISION

The following statistics represent complaints received in violation of M.G.L. c.149A arising in the 70 cities and towns located in Bristol, Plymouth, Barnstable, and Dukes Counties for non-payment of wages and failure to pay prevailing wages.

Calls	5,380
Non-payment & Prevailing Wage complaints - Opened	527
Non-payment & Prevailing Wage complaints - Closed	469
Total Restitution and Penalties/Fines	\$239,344.86



PUBLIC PROTECTION BUREAUCONSUMER PROTECTION

Complaints in the areas of automobile sales, home improvement, and retail sales were the most prevalent in Southeastern Massachusetts. The goal to provide voluntary telephone mediation and information to empower consumers with information continued to be the most effective method to provide assistance to the public we service.

CONSUMER MEDIATION

Calls	1,693
Consumer Complaints Resolved/Mediated	244
Total Saved SEMA Consumers	\$103,499.86

**SIGNIFICANT INITIATIVES, EFFORTS, AND ACTIVITIES**

The SEMA Consumer Team met monthly to review trends in complaints and potential affirmative cases and discuss appropriate community outreach efforts. The team also worked on coordinating and equalizing information sharing through the Everest system with CCIS, the local consumer protection agencies, and the regional offices submitted a regular consumer column to a local newsletter and developed a regional home improvement contractor's proposal.

Assistant Attorney General Steve Marshalek sat as a hearings officer with Registry of Motor Vehicle's Board of Appeal on a regular basis, several times each month. The SEMA Division had two interns during Fiscal Year 2003: Viral Keshwala, a law student from Southern New England Law School and Kristine Massoud, a student at New Bedford High School.

SEMA staff served on several of the Office's committees. Patricia Medeiros served on the Diversity Committee and the AGO Web site Committee. Diane Lopes Flaherty served on the AGO Elder Steering Committee/AGO Elder Strike Force.

## **OUTREACH, EDUCATION, AND TRAINING**

Protecting children is an ongoing priority of Attorney General Reilly and the SEMA Division. In Fiscal Year 2004, SEMA staff worked with the New Bedford Public Schools to make possible the Youth Court and Youth Summit, Empowering Youth Programs, funded by the schools' Safe Harbors Grant Program.

SEMA staff participated extensively in New Bedford's Youth Court program. Youth Court is a juvenile diversion program that hears cases involving middle school and high school students referred by the schools or the courts. High school students participate as prosecutors, defense counsel, and jurors. SEMA staff trained the students to act as prosecutors and defense counsel. SEMA staff also participated regularly as the judge for Youth Court.

SEMA staff helped to plan and participated in New Bedford's Second Annual Youth Summit. The one day event included a series of speakers, presentations, and workshops for over 300 teens on topics of interest to youth, such as conflict resolution and the dangers of alcohol and drug use.

SEMA staff assisted 16 students in their Summer of Work and Learning Project with the production of a television segment to be aired on local cable TV, filmed at the SEMA Regional Office, on topics relating to young workers, young consumers, and the function of the regional Office of the Attorney General. The students developed public service announcements and interviewed SEMA staff as they learned to compile and edit the television segment. The Project's goal was to combine the benefits of classroom learning with on-the-job experience to assist high school seniors in passing the MCAS.

SEMA staff held Internet Safety presentations at two local schools. The presentations reached more than 100 children and parents. Staff participated in the New Bedford Prevention Partnerships' SMILES Breakfast Club Mentoring program, Sylvan Learning Centers' We Care About Kids Day, and Carney Academy's Safety Day.

SEMA staff empowered numerous seniors on consumer rights, scams, domestic violence, and financial exploitation. Outreach presentations were held at the Niagra-Maplewood Senior Center and Olympia Towers in Fall River. Presentations included an Elder Financial Exploitation Conference and Bank Reporting Project Training Session held at the Cape Cod Co-Operative Bank and sponsored by the Office of the Attorney General and the Massachusetts Bankers Association. Regional staff provided

welcoming remarks at an Attorney General’s workshop on Elder Financial Exploitation in Hyannis; participated as moderator at a Portuguese “Know Your Rights” Conference for elderly at Mount Carmel Church in New Bedford; and participated as moderator at an elder workshop, Safeguarding Our Seniors, at Fairhaven Council on Aging.

A number of building inspectors in southeastern Massachusetts attended a roundtable discussion at the SEMA Regional Office regarding issues surrounding home improvement contracts. Staff was then invited to the Southeastern MA Building Officials Association Monthly Meeting to provide a “Do’s & Don’ts” presentation. Staff also met with area building inspectors about the types of home improvement contractor complaints and discussed strategies to educate homeowners. Diane Lopes Flaherty presented the program “The Do’s & Don’ts of Hiring a Home Improvement Contractor” at the New Bedford Chamber of Commerce’s Home Show and at the Plumb Library in Rochester.

SEMA staff also attended the regular meetings of the Local Consumer Program and Consumer Coalition meetings. The division also represented the Office at the Freetown Lions Club (identity theft), the New Bedford Crime Summit, and the Acushnet Council on Aging, the New Bedford Prevention Partnership Neighborhood, and participated in United Way Review Board meetings.

The division participated in the application process for New Bedford’s Weed & Seed Grant and continued its attempt to identify and locate property in the Weed & Seed neighborhood appropriate for an abandoned housing project.

Professional development is offered to both legal and non-legal staff in the Office of the Attorney General. Members of the SEMA Division attended Attorney General Institute trainings such as the Office’s Anti-Discrimination Training; AGI Management Training; AGI Elder Advocate Training; AGI Ergonomics Training; AGI Handling Phone Calls from the Public; and AGI Notary Training.